

OFFICE COPY

VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 155

MICHIGAN NATIONAL BANK, ET AL.,
APPELLANTS,

vs.

MICHIGAN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

FILED JUNE 17, 1960

PROBABLE JURISDICTION NOTED OCTOBER 10, 1960

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STATE OF MICHIGAN

IN THE

SUPREME COURT

Appeal from the Court of Claims

Honorable Fred N. Searl, Circuit Judge, Acting Judge
of the Court of Claims

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States,

Plaintiff and Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN), COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States,

Intervening Plaintiffs,

No.

v.
STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Defendants and Appellees.

PLAINTIFF AND APPELLANT'S
APPENDIX

CALENDAR ENTRIES

1953

- Dec. 7. Petition filed.
- Dec. 23. Defendants' answer filed.
- Dec. 23. Proof of service filed.
- Dec. 23. Notice of appearance to petition and statement of claim filed.

1954

- Feb. 13. Order and stipulation for continuance filed—continued to September, 1954, term.
- Aug. 11. Stipulation for continuance to March term, 1955, filed.
- Dec. 6. Over to December 21, 1954, for pre-trial hearing as per order signed by Judge Black of 12/7/54.
- Dec. 21. Pre-trial conference held.
- Dec. 27. Order of the Court dated 12/21/54 re pre-trial signed, filed.

1955

- May 6. Order granting petitions for leave to intervene filed (signed by Judge Searl).
- May 23. Intervenor's answer to petition and statement of claim filed.

1956

- Jan. 1. Plaintiff's statement of position filed.
- Mar. 30. Petition for leave to intervene filed.
- Mar. 30. Waiver of notice and consent to entry of order granting petitions for leave to intervene filed.

- Mar. 30. Order granting petitions for leave to intervene filed.
- Apr. 17. Statement of position of defendants and defendants intervenors filed (Judge Searl).
- Apr. 24. Petitions for leave to intervene and notice of hearing on petitions for leave to intervene (Community National Bank of Pontiac, Commercial National Bank of Ithaca, and First National Bank of Holland) filed (Judge Searl).
- May 3. Plaintiff intervenor's verified petition and statement of claim (National Bank of Wyandotte; First National Bank, Charlotte; Houghton National Bank; First National Bank, Three Rivers; National Bank of Jackson; and First National Bank and Trust Company of Kalamazoo) filed (Judge Searl).
- May 3. Order denying petitions for leave to intervene (Community National Bank of Ithaca and First National Bank of Holland) filed (Judge Searl).
- May 3. Order of discovery filed (Judge Searl).
- May 4. Plaintiff intervenor's petition and statement of claim (Commercial National Bank of Iron Mountain) filed.
- June 12. Order for discovery filed.
- June 28. Answer of intervenor plaintiffs to defendants' motion to strike intervenor plaintiffs as parties to this action filed (Judge Searl).
- June 28. Motion to strike intervenors defendants as parties to this action filed (Judge Searl).
- July 5. Answer to plaintiff's motion to strike defendant intervenors filed with Judge Searl.

- July 5. Opinion (relative to additional parties) filed.
Oct. 12. Notice of settlement of order filed with Judge Searl.
Nov. 21. Notice of settlement of order filed with Judge Searl.
Nov. 21. Notice of discontinuance on behalf of plaintiff intervenors Dart National Bank and First National Bank (Charlotte) filed with Judge Searl.
Nov. 28. Order re intervenor plaintiffs and intervenor defendants and petitions for leave to intervene.

1957

- Dec. 10. Official communication of Judge Searl to counsel filed.

1958

- Jan. 8. Notice of hearing filed.
Feb. 18. Request for admissions filed.
Feb. 28. Notice of intention to offer copies, synopses or abstracts of public records filed by plaintiff.
Feb. 28. Memorandum of plaintiff and plaintiff intervenors re notice of intention to offer copies, synopses or abstracts of public records filed by plaintiff.
Feb. 28. Defendants' answer to plaintiff's request for admissions.
Mar. 20. Opinion filed.
Mar. 21. Stipulation for adjournment of trial date and order for continuance filed.
Apr. 25. Notice of intention to offer copies, synopses or abstracts of public records filed.

- May 7. Defendants' motion for summary judgment of no cause of action, affidavit of Clarence W. Lock, notice of hearing, and proof of service filed.
- May 14. Petition to modify subpoena (Capitol Savings and Loan Association) and notice of hearing filed.
- May 13. Defendants' brief in support of motion for summary judgment filed.
- May 15. Notice of appearance and petition to modify subpoena (Calhoun Federal Savings and Loan Association) and notice of hearing filed.
- May 15. Petition to modify subpoena (Saginaw Savings and Loan), notice of hearing and proof of service filed.
- May 15. Petition to modify subpoena (First Federal Savings and Loan Association of Flint), motion to modify subpoena and notice of motion filed.
- May 16. Petition to modify or quash subpoena (Mutual Home Federal Savings and Loan Association) and notice of hearing on motion filed.
- May 16. Petition to modify subpoena (Marshall Savings and Loan Association) and notice of motion filed.
- May 16. Motion to quash subpoena duces tecum (Grand Rapids Mutual Federal Savings and Loan Association), notice of hearing and proof of service filed.
- May 16. Petition to modify subpoena (Union Savings and Loan Association) filed.
- May 19. Plaintiff's affidavit of merits filed.

- May 19. Motion to quash subpoena duces tecum (Citizens Federal Savings and Loan Association of Port Huron) filed.
- May 19. Petition to quash or modify subpoena (West Side Federal Savings and Loan Association) and notice of hearing filed.
- May 19. Petition to modify subpoena (East Lansing Savings and Loan Association) and notice of hearing filed.
- May 19. Petition to modify subpoena (First Savings and Loan Association of Saginaw) filed.
- May 19. Appearance of counsel filed for Saginaw Savings and Loan Association.
- May 19, 20, 21, 22. Partially heard before the Honorable Fred N. Searl, Circuit Judge Presiding, at Lansing, Michigan.
- June 20. Notice of discontinuance on behalf of plaintiff intervenor Houghton National Bank filed.
- July 14, 15, 16. Partially heard before the Honorable Fred N. Searl, Circuit Judge Presiding, at Lansing, Michigan.
- Oct. 20. Motion to strike evidence filed by defendants.
- Oct. 20, 21, 22. Completed hearing before the Honorable Fred N. Searl, Circuit Judge Presiding, at Lansing, Michigan.
- Oct. 27. Brief in support of motion to strike evidence filed.
- Nov. 6. Plaintiff's brief filed.
- Nov. 12. Answer to motion to strike evidence filed.
- Nov. 13. Plaintiff's proposed findings of fact filed.
- Nov. 25. Defendants' reply brief filed.
- Dec. 15. Plaintiff's reply brief filed.

1959

- Jan. 20. Opinion filed.
- Jan. 26. Judgment of no cause of action filed.
- Jan. 26. Clerk's notice of entry of order.
- Jan. 30. Claim of appeal to Michigan Supreme Court filed by plaintiff.
- Feb. 2. Certificate of the trial judge that the controversy involves more than \$500.00 filed.
- Feb. 6. Proof of service on claim of appeal filed.
- Feb. 11. Stipulation for corrections in transcript of trial filed.

PETITION AND STATEMENT OF CLAIM

(Filed December 7, 1953)

Michigan National Bank, a banking association organized under the laws of the United States, brings in this court, as the court of exclusive jurisdiction under Compiled Laws Sec. 691.108 and files this, its verified Statement of Claim, in the form of a Petition for recovery of the sum paid on the 10th day of November, 1953, under protest, to Louis M. Nims, State Commissioner of Revenue of the State of Michigan, being a tax levied by said Commissioner pursuant to Act 9 of the Public Acts of 1953 on the privilege of ownership of each share of stock of plaintiff association, and respectfully shows:

1. Plaintiff is a National banking association organized under the laws of the United States and pursuant thereto carrying on a banking business in the State of Michigan. Plaintiff's principal banking office is in the City of Lansing with other banking offices in the Cities of Battle Creek, Flint, Grand Rapids, Marshall, Port Huron and Saginaw. Plaintiff's business of banking is carried on at all of said offices.

2. Defendant Louis M. Nims, State Commissioner of Revenue, heretofore, on May 20, 1953, gave notice in writing to plaintiff of "intent to assess" a deficiency of \$49,680.87 with interest in the sum of \$248.40, being a total of \$49,929.27, which deficiency consisted wholly of the tax levied pursuant to said Act 9 of the Public Acts of 1953, over and above the tax under the other provisions of Act 301 of the Public Acts of 1939 (of which said Act 9 is an amendment), which tax under said other provisions had been theretofore paid by plaintiff. A copy of said notice of intent to assess said deficiency is attached hereto, marked Exhibit A.

3. Plaintiff, pursuant to its right under said Act 301 of 1939, requested a hearing on said intent to assess before or with said Department of Revenue, which hearing was had on June 12, 1953. Thereafter and on November 2, 1953, said Commissioner of Revenue by the Deputy Commissioner in writing confirmed the said intent to assess, making the assessment to date November 2, 1953. A copy of said notice confirming said assessment is hereto attached, marked Exhibit B, and a copy of the notice of assessment and demand for payment which accompanied said Exhibit B is hereto attached, marked Exhibit C.

4. Thereafter and on November 10, 1953, plaintiff paid the said sum of \$49,929.27, accompanying such payment with a protest in writing delivered therewith, of which protest a copy is hereto attached, marked Exhibit D. The grounds of said protest were:

"(a) said tax is, in the words of the statute levying the same, on the 'privilege of ownership' and the privilege of ownership of shares of national banks is not subject to tax by a state; and

(b) the tax is 'at a greater rate than is assessed upon other monied capital coming into competition with the business of national banks' and in particular this Bank, and is as to this Bank violative of Section 548 Title XII of the United States Code."

The said grounds of protest are the same grounds as presented and asserted against said tax at said hearing held June 12, 1953, and are now hereby asserted as the grounds of this suit and for recovery back of the payment of said \$49,929.27 made as aforesaid.

5. The said ground set forth as (a) is solely a matter of law arising from a circumstance that plaintiff is organized under the laws of the United States and also is an agency of the United States. The privilege of ownership of shares of plaintiff is derived solely from the United States and is not subject to taxation by a State unless and only to the extent and in the manner which Congress by express enactment may permit. Congress has enacted Section 548 of Title XII of the United States Code, which both authorizes and limits the taxing of National banking associations and the shares thereof. Under said section the State may tax the shares *or* the banking association, but not both the shares *and* the banking association. Likewise, the State may tax the banking association measured by net income but not the shares measured by income. Likewise, the State may tax the shares *or* tax the income to the owner or holder but may not do both. Nowhere in said Section is a State permitted to levy a tax on the "privilege of ownership" of shares. The tax under said Act 9 of 1953 being invalid, Section 2 of Act 301 of 1939, as amended, levies a tax in respect of said shares of 3½% of the dividends paid by plaintiff thereon. The said sum of \$49,929.27 levied as aforesaid is the amount of tax under said Act 9 of 1953

over and above the tax of \$18,500.00 under said Section 2 of 301 of 1939. The said tax under said Section 2 is also levied on the "privilege of ownership." Said Act 301 as originally enacted levied tax upon "the ownership of intangible personal property," but by Act 165 of the Public Acts of 1945 the same was changed to a tax upon "privilege of ownership."

6. The said ground of protest set forth as (b) is based upon subdivision 1b of said Section 548 of Title XII of the United States Code, which said subdivision, so far as here material, reads as follows:

"In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks."

Plaintiff bank at its several offices aforesaid is in direct competition with other moneyed capital of individual citizens used in making loans in or otherwise financing various and sundry transactions by said individuals in person or by agent, or in partnership or other associations, building and loan associations organized under the laws of the State of Michigan, savings and loan associations likewise organized, finance corporations organized under the laws of the State of Michigan or admitted by said State to do business therein, insurance companies likewise so organized or admitted, and other incorporated institutions with the moneyed capital of such individual citizens contributed to said institutions for such purposes and represented in the hands of individual citizens by shares of stock or other securities of said institutions. Plaintiff in particular has a large and extensive business at each of its said banking offices in

making loans secured by mortgage on real estate and at the place or location of each said office other moneyed capital is in active use by individuals and institutions as aforesaid in making such loans.

The tax on the shares of plaintiff Bank assessed as aforesaid is at a greater rate than is the tax assessed on such other moneyed capital so in competition with plaintiff in its said business as a national bank. The said assessment on the shares of plaintiff Bank here complained of is for that reason unlawful and invalid and should be so adjudged and recovery back of the sum paid on account thereof awarded.

Wherefore, judgment is prayed against the State of Michigan and said State Commissioner of Revenue for recovery of said sum of Forty-nine Thousand Nine Hundred Twenty-nine Dollars and Twenty-seven Cents (\$49,929.27) paid as tax and interest, together with all such penalties, interest and costs as will make plaintiff whole and shall be by law allowable.

Michigan National Bank
By H. J. Stoddard, President.
Address: Lansing, Michigan.

EXHIBIT A

STATE OF MICHIGAN
DEPARTMENT OF REVENUE
LANSING

May 20, 1953

Michigan National Bank

Lansing, Michigan

Attention: Russell Fairles—Vice President

Re: Intangibles Tax Account No. 900400

Gentlemen:

This office has made an examination of your 1952 Michigan intangibles tax returns together with your statement of condition and find that under the intangibles tax statutes your return should have been computed as follows:

Tax on Deposits (as reported).....	\$100,318.24
Tax on Stock (recomputed)	
Total Pfd. Capital.....	\$ 1,000,000.00
Tax at $5\frac{1}{2}$ mills.....	5,500.00
Common Capital	5,000,000.00
Surplus	5,000,000.00
Undivided Profits	1,396,522.59
Total	\$11,396,522.59
Tax at $5\frac{1}{2}$ mills.....	62,680.87
Total Tax	168,499.11
Previously Paid	118,818.24
Deficiency	49,680.87
Int. at $\frac{1}{2}$ of 1% per mo. for 1 mo.....	248.40
Total Amount Due.....	\$ 49,929.27

In line with our previous correspondence and conference on this matter this department is setting up a formal intent to assess the above indicated deficiency. This intent to assess will be forwarded to you within the next few days.

Very truly, yours

Department of Revenue
Louis M. Nims, Commissioner

(Signed) Gerrit Van Coevering, Supervisor
Intangibles and Inheritance
Tax Divisions

EXHIBIT B

MICHIGAN
DEPARTMENT OF REVENUE

LANSING

November 2, 1953

Michigan National Bank
Lansing, Michigan
Attention: Howard Stoddard—President

Gentlemen:

Re: Intangibles Tax Account No. 900400
Intent to Assess No. F 26730

Pursuant to your formal request on the above mentioned intent to assess, a hearing, as provided in the statute, was held on June 12, 1953.

This department has given careful consideration to the matters raised at the hearing and has come to the

conclusion that the position of the Michigan National Bank is not well founded and that the assessment should issue.

It is, therefore, the determination of this department that its intent to assess No. F 26730 in the total amount of \$49,929.27 is hereby confirmed and that the date on this assessment shall be considered to read November 2, 1953.

Yours very respectfully,

Clarence W. Lock
Deputy Commissioner

EXHIBIT C

STATE OF MICHIGAN
DEPARTMENT OF REVENUE
LANSING, MICHIGAN

License Number

900400

Assessment issued

June 11, 1953

Penalty of

And Interest of

$\frac{1}{2}$ of 1% Per Month as Provided by Law

9-05-13

You are hereby notified of assessment by the Department of Revenue for

Michigan National Bank
Lansing, Michigan

[X] Intangible Tax Act No. 301
of the Public Acts of 1939 as
amended

Year	Month	Tax	Interest	Total
Year 1952		\$118818.24		
PAID		118818.24		
Year 1952 Per office audit		496.87		
Interest			\$248.40	
		\$49680.87	\$248.40	\$49929.27

Deficiency due per office audit.

\$49929.27

\$49929.27

EXHIBIT D

MICHIGAN NATIONAL BANK

Battle Creek Flint Grand Rapids Lansing
Marshall Port Huron Saginaw

Lansing, Michigan

November 10, 1953

Department of Revenue
Lansing, Michigan

Dear Sirs:

Payment under protest is made concurrently herewith of the assessment of intangibles tax by Department letter of November 2, 1953, directed to the undersigned confirming Intent to Assess No. F-26730, sent with said letter. The grounds of said protest are that:

- (a) said tax is, in the words of the statute levying the same, on the "privilege of ownership" and the privilege of ownership of shares of national banks is not subject to tax by a state; and
- (b) the tax is "at a greater rate than is assessed upon other monied capital coming into competition with the business of national banks" and in particular this Bank, and is as to this Bank violative of Section 548 of Title XII of the United States Code.

In addition to said grounds of protest herein set forth, the undersigned reserves all rights to recover such pay-

ment or any part thereof which would be available if said grounds had not been stated.

Very truly yours,

Russell Fairles.
Vice President

**DEFENDANTS' ANSWER TO PETITION AND
STATEMENT OF CLAIM**

(Filed December 22, 1953)

Now come the defendants named herein, State of Michigan, Department of Revenue and Louis M. Nims, State Commissioner of Revenue, by Clarence W. Lock, Deputy Commissioner of Revenue and in answer to the plaintiff's petition and statement of claim filed herein admits, denies and alleges as follows:

1. In answer to paragraph enumerated 1, the defendants admit the statements contained therein.

2. In answer to paragraph enumerated 2, the defendants admit that defendant Louis M. Nims, State Commissioner of Revenue, heretofore on May 20, 1953, gave notice in writing to plaintiff of "intent to assess" a deficiency of \$49,680.87 with interest in the sum of \$248.80, being a total of \$49,929.27, which deficiency was levied pursuant to said Act 9 of the Public Acts of 1953, and further admit that a copy of said notice of intent to assess said deficiency is attached to the plaintiff's petition and statement of claim marked as Exhibit A.

In further answer to said paragraph, the defendants deny each and every other allegation contained therein

18a *Answer to Petition and Statement of Claim*

and affirmatively assert that the total tax levied against the plaintiff for intangibles tax for the year 1953 for the tax on the owners of shares of stock in the Michigan National Bank (plaintiff herein) was in the amount of \$68,180.87; and

Further, that the defendants allowed a credit in the amount of \$18,500, which represented tax previously paid under Act 301, P. A. 1939, as amended.

3. In answer to paragraph enumerated 3, the defendants admit the statements contained therein.

4. In answer to paragraph enumerated 4 of the plaintiff's petition and statement of claim, the defendants admit that on November 30, 1953, the plaintiff paid the sum of \$49,929.27 under protest in writing, a copy of which protest is attached to plaintiff's petition and statement of claim and marked as Exhibit D and that the grounds of said protest were as set forth in paragraphs enumerated (a) and (b) of paragraph enumerated 4 of plaintiff's petition and statement of claim.

In further answer to paragraph enumerated 4 of plaintiff's petition and statement of claim the defendants neither admit nor deny the remaining allegations contained therein and assert that the alleged grounds of protest set forth in paragraphs (a) and (b) of paragraph 4 of the petition and statement of claim (being the same as the paragraphs enumerated (a) and (b) of Exhibit D) constitute erroneous conclusions of law and do not constitute proper facts requiring answer but are, nevertheless, completely denied by the defendants in this answer.

5. In answer to paragraph enumerated 5 of the plaintiff's petition and statement of claim, the defendants neither admit nor deny the matters set forth therein, but leave plaintiff to its proof to the extent deemed material

and further assert that such matters set forth in said paragraph constitute conclusions of law and are not properly within the province of this answer.

In further answer to said paragraph enumerated 5, the defendants assert that notwithstanding the invalid conclusions of law contained therein, the defendants properly required and the plaintiff properly paid, in accordance with the applicable provisions of the Michigan intangibles tax act, the sum of \$49,929.27, as imposed by section 2a, Act 301, P. A. 1939, as amended by Act No. 9, P. A. 1953 and such payment as required is legal and valid in every respect.

6. In answer to paragraph enumerated 6 of the plaintiff's petition and statement of claim, the defendants neither admit nor deny all the matters contained therein, except deny that the tax on the shares of plaintiff Bank assessed as aforesaid is at a greater rate than is the tax assessed on such other moneyed capital so in competition with plaintiff in its said business as a National bank; and that the said assessment on the share of plaintiff bank here complained of is for that reason unlawful and invalid and should be so adjudged and recovery back of the sum paid on account thereof awarded; and

Further, that plaintiff is entitled to any judgment whatsoever.

As to the allegations set forth in plaintiff's paragraph enumerated 6 that are neither admitted nor denied, defendants assert that they constitute factual and legal conclusions not properly substantiated by other allegations contained in the plaintiff's petition and statement of claim and are set forth to support factual and legal conclusions and, to the extent they assert such factual and legal conclusions, they are denied by the defendants.

20a *Answer to Petition and Statement of Claim*

In further answer to paragraph enumerated 6, the defendants assert that section 2a of Act 301, P. A. 1939, as amended, imposes a legal and permissible form of taxation the owners shares of stock of the plaintiff; and

That, pursuant to such act there was properly due the defendants the assessed sum of \$49,929.27 for the intangibles tax on plaintiff's shares of stock for the year 1953 and that the plaintiff, in paying this amount of money to the defendant, Department of Revenue of the State of Michigan, did so in accordance with the legal and valid provisions of Act 301, P. A. 1939, as amended by Act No. 9, P. A. 1953.

Wherefore, the judgment is prayed against the Michigan National Bank, plaintiff, of no cause of action, with costs to the defendants.

Michigan Department of Revenue
By Clarence W. Lock
Deputy Commissioner

Frank G. Millard,
Attorney General,
T. Carl Holbrook,
Assistant Attorney General,
Attorneys for Defendants,
State Capitol Building,
Lansing, Michigan.

**DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT OF NO CAUSE
OF ACTION**

(Filed May 7, 1958)

Now come the above defendants by their attorneys, Paul L. Adams, Attorney General, T. Carl Holbrook and William D. Dexter, Assistants Attorney General, and move this Honorable Court for the entry of a summary judgment of no cause of action in favor of defendants and against the plaintiff and plaintiff intervenors and say:

1. That this is a statutory cause of action authorized by the Court of Claims Act [P. A. 1939, No. 135, as amended (C. L. §691.101 et seq.; M. S. A. §27.3548(1) et seq.)] for the recovery of intangibles taxes paid by plaintiff and plaintiff intervenors for the intangibles tax levied pursuant to Act No. 9 of the Public Acts of 1953, for the tax assessed pursuant to said act for the year 1952 in the amount of \$49,929.27 for the principal plaintiff and an unknown amount for the intervening plaintiffs.
2. That defendants are entitled to a judgment of no cause of action against plaintiff and plaintiff intervenors as a matter of law upon the facts set forth in the pleadings, depositions and files in this cause, including those statements and admissions of plaintiff's counsel contained in his letter to this Court dated December 10, 1957, a copy of which is appended hereto and made a part of this motion.
3. That the taxes for which recovery is sought were paid to the defendant Department of Revenue pursuant

to the provisions of the Michigan Intangibles Tax Statute [P. A. 1939, No. 301, as amended by P. A. 1953, No. 9 (C. L. S. §205.131 et seq.; M. S. A. §7.556(1) et seq.)] and were properly due and owing, as set forth in the pleadings in this cause, and said taxes were paid and collected without violation of any statutory or constitutional rights, privileges or immunities of plaintiff and plaintiff intervenors.

4. That plaintiff and plaintiff intervenors are not entitled to a refund for any taxes paid or for a judgment in any amount and that there are no issues of fact which, if resolved in favor of plaintiff or plaintiff intervenors, would entitle them to judgment and that plaintiff and plaintiff intervenors have no cause of action in law, and more particularly because the plaintiff's allegation that P. A. 1953, No. 9, subjects to tax plaintiff's shares of stock in violation of §5219 of the United States Code Annotated because

“(a) said tax is, in the words of the statute levying the same, on the ‘privilege of ownership’ and the privilege of ownership of shares of national banks is not subject to tax by a state; and

“(b) the tax is ‘at a greater rate than is assessed upon other monied capital coming into competition with the business of national banks’ and in particular this Bank, and is as to this Bank violative of Section 548 Title XII of the United States Code.”

is without merit.

5. Defendants make this motion without conceding the propriety of intervention of plaintiff intervenors in this cause and their assertion of either a joint or several right of recovery with plaintiff, Michigan National Bank, herein.

Wherefore, defendants pray that a summary judgment of no cause of action be granted against plaintiff and plaintiff intervenors.

Paul L. Adams,
Attorney General,
T. Carl Holbrook,
William D. Dexter,
Assistants Attorney General,
(Sgd.) William D. Dexter,
Assistant Attorney General,
Attorneys for Defendants.

State Capitol,
Lansing, Michigan.

AFFIDAVIT OF CLARENCE W. LOCK

Clarence W. Lock, being duly sworn, deposes and says that he is a Deputy Commissioner of the Department of Revenue of the State of Michigan and that he is duly authorized to make this affidavit on behalf of the defendants; that he makes this affidavit in support of defendants' motion for summary judgment of no cause of action against the plaintiff and plaintiff intervenors in the above-entitled cause; that all of the facts set forth herein are within his personal knowledge; that he is not disqualified from being a witness in this cause and that if he is sworn as a witness, he can competently testify to the facts hereinafter set forth; and that the facts entitling defendants to a summary judgment of no cause of action against the plaintiff and plaintiff intervenors are as follows:

1. That on the facts as set forth in the pleadings together with the exhibits attached thereto and on admissions of counsel, heretofore filed in this cause, deponent believes that defendants are entitled to a judgment of no cause of action against the plaintiff and plaintiff intervenors as a matter of law inasmuch as there are no issues of fact, which, if resolved in favor of plaintiff or plaintiff intervenors, would entitle them to judgment.

2. That plaintiff brings this action to recover from defendants intangibles taxes it has paid for the year 1952, in the amount of \$49,929.27, pursuant to the provisions of P. A. 1953, No. 9, and that plaintiff bases its right to recover on the ground that said statute violates §5219 of the United States Code Annotated in that said tax is levied upon the privilege of ownership of its shares of its stock and that building and loan associations, both state and federal, and their activities are included within the scope of §5219 of the United States Code Annotated and that such institutions are included within the phrase

“other moneyed capital in the hands of individual citizens of such state coming into competition with the business of national banks • • •”

and that the moneyed capital of such institutions is taxed at a lesser rate than is assessed on the capital of plaintiff.

3. That Act No. 9, P. A. 1953, does not impose an invalid tax on plaintiff under the allegations, pleadings and admissions in this cause because, as a matter of law, state and federal building, savings and loan associations are not within the scope of §5219 of the United States Code Annotated and, therefore, defendants are entitled

to a summary judgment of no cause of action against plaintiff and plaintiff intervenors.

Further, deponent sayeth not.

Clarence W. Lock.

Subscribed and sworn to before me this 6th day of May, A. D. 1958.

Leona M. Hudnut,
Notary Public, Ingham County, Michigan.
My commission expires October 15, 1960.

AFFIDAVIT OF MERITS*

(Filed May 19, 1958)

State of Michigan,
County of Wayne—ss.

Russell Fairles, being first duly sworn, deposes and says that he is Vice President of Michigan National Bank, a national banking association organized under the laws of the United States, one of the plaintiffs in the above entitled cause, and makes this affidavit for the purpose of preventing the entry of a summary judgment against Michigan National Bank and the intervening plaintiffs of no cause of action in favor of defendants; that all the facts herein set forth are within his personal knowledge, except for the following:

*To obviate unnecessary duplication, exhibits referred to in this Affidavit of Merits are not printed at length as part thereof since such exhibits were offered in virtually the same form (with few variations) at the trial under the same exhibit numbers as were used in the Affidavit of Merits. Such trial exhibits, printed as part of this appendix, may be referred to in reading the Affidavit of Merits.

Paragraph 6, the first two sub-paragraphs of paragraph 7, such part of paragraph 8 as relates to the intervening plaintiffs, paragraph 10, paragraph 18, and paragraph 19;

as to paragraph 11, deponent says that the matters therein contained are true to the best of his knowledge and belief based upon inquiries made by him or on his behalf of the said Secretary of State and the Michigan Corporation and Securities Commission; as to paragraph 14, deponent says that the contents thereof are true and correct to the best of his knowledge and belief, said reports having been prepared by him, or under his supervision, based upon published reports of condition of such associations appearing in their respective local newspapers, such published reports having been regularly received by him, from which he or persons under his supervision prepared the exhibits mentioned in said paragraph 14; that deponent is not disqualified from being a witness, and that if sworn as a witness, he can competently testify to the facts contained in this affidavit, with the exceptions heretofore noted.

Further deponent deposes and says that as to the excepted matters, plaintiff is unable to obtain affidavits of persons who can competently testify thereto and to the best of his knowledge and belief, the matters set forth in the following paragraphs may be completely proven by the following evidence and persons, and plaintiff intends to and asks leave to proffer such proof upon the motion for summary judgment.

Paragraph 6 relates to matters within the knowledge of the intervening plaintiffs and the defendants and the intervening plaintiffs if given an opportunity can and will file an Affidavit of Merits support-

ing the allegations herein made and can competently testify to the matters therein set forth.

Paragraph 7 relates to matters within the knowledge of certain officers of defendant State of Michigan, to wit: the Michigan Corporation and Securities Commissioner and the officer in charge of the Building and Loan Division of the Secretary of State; these persons have been subpoenaed to testify, and if permitted to testify pursuant to such subpoenas, such officers will testify in support of the matters set forth in said paragraph 7.

Paragraph 8 relates to matters, insofar as the intervening plaintiffs are concerned, which are within the knowledge of said intervening plaintiffs and of the defendants, and if given an opportunity, said intervening plaintiffs will file an affidavit in support of the matters contained in said paragraph relating to each of them and can competently testify to the matters therein contained.

Paragraph 10 relates to matters within the knowledge of intervening plaintiffs and the savings and/or building and loan associations described in said paragraphs; if given an opportunity, the intervening plaintiffs will file an affidavit supporting the matters therein stated, and, further, if given the opportunity to call the managing officers of said savings and/or building and loan associations as witnesses, it is believed that they can and will competently testify in support of the matters set forth in said paragraph 10.

Paragraph 11 relates to matters within the knowledge of the Corporation and Securities Commission and the Secretary of State of the State of Michi-

gan, whose affidavits cannot be obtained. The Corporation and Securities Commissioner and the officer in charge of the Building and Loan Association Division of the Secretary of State have been subpoenaed, and if permitted to testify at the hearing on defendants' motion, would testify in support of the matters set forth in said paragraph 11. The matters set forth in said paragraph are also within the knowledge of the officers of the various savings and/or building and loan associations above mentioned, whose affidavits cannot be obtained by plaintiff; such officers have been subpoenaed to testify, and if permitted could competently testify as indicated in said paragraph if sworn as witnesses; as to certain associations, plaintiff has taken the depositions of their managing officers, and their testimony and the accompanying exhibits support the allegations of said paragraph 11.

Paragraph 14 contains matters within the knowledge of the savings and loan associations listed and is also a matter of public record, said reports of financial condition referred to in said paragraph being required by law to be published and being in fact published by such associations. In the case of reports of condition as of June 30, 1952, referred to in said paragraph, such reports are public records competent to prove the financial condition of the associations for the additional reason that they are published by the Secretary of State as a part of his report, required by law, on the financial condition of each such association; copies from said annual report of the statement of condition of each domestic association listed has previously been served upon defendants and filed with plaintiff's

Notice of Intention to offer such reports as exhibits at the trial; further plaintiff is unable to secure affidavits from the associations listed; but believes that if called as witnesses the managing officers of such associations would competently testify as indicated in said paragraph; each of the managing officers of the said association and the associations have been subpoenaed to appear as witnesses at the trial of this cause; as to certain associations, depositions have been taken of their managing officers, and their testimony and supporting exhibits support the facts as stated in said paragraph as to their associations.

Paragraph 18 and 19 contains matters based upon public records and reports of Government agencies, to wit: the Federal Home Loan Bank Board, the Building and Loan Division of the Secretary of State, and the Annual Report of the Comptroller of the Currency of the United States, all of which records and reports are admissible as evidence and competent to prove the facts set forth in said paragraphs 18 and 19; also the matters therein stated are in part competently proven by the said depositions of certain savings and loan associations heretofore taken and the exhibits accompanying said depositions; further deponent believes that the matters contained in said paragraphs 18 and 19 would be competently testified to by the managing officers of the savings and loan associations listed above; deponent has been unable to secure affidavits from such associations or officers, but each of said associations and their managing officers have been subpoenaed to testify at the trial of this cause as to the matters herein set forth.

That all the facts pertaining to the action in this cause have been fully and fairly stated to Butzel, Eaman, Long, Gust & Kennedy, who are plaintiff's attorneys and attorneys for the intervening plaintiffs, and that deponent, upon such statement and the other evidence above referred to, has been advised by said attorneys that plaintiff and intervening plaintiffs have a meritorious cause of action; that the facts upon which plaintiff's cause of action is based, are as follows:

1. Plaintiff, Michigan National Bank is a national banking association, with its principal office in the City of Lansing, Michigan; and with other banking offices in the State of Michigan located in the following cities: Battle Creek, Flint, Grand Rapids, Marshall, Port Huron and Saginaw.

2. Intervening plaintiffs are also national banking associations whose principal offices are located in the State of Michigan as follows: Houghton National Bank, at Houghton, Michigan; Commercial National Bank of Iron Mountain, at Iron Mountain, Michigan; National Bank of Jackson, at Jackson, Michigan; First National Bank and Trust Company of Kalamazoo, at Kalamazoo, Michigan; First National Bank, at Three Rivers, Michigan, and The National Bank of Wyandotte, at Wyandotte, Michigan.

3. Plaintiff's and intervening plaintiffs' banking offices are located in twelve different counties in the State of Michigan; said cities and counties are located throughout the state, and are amongst the most heavily populated cities and counties in the state.

4. Pursuant to Act 9 of the Public Acts of Michigan of 1953, for the year 1952 (and similarly thereafter each year to the date hereof) defendant, State of Michigan,

levied and collected a tax at the rate of $5\frac{1}{2}$ mills (\$5.50 per \$1,000.00) "on the privilege of ownership of each . . . share of stock" of plaintiff and of the intervening plaintiffs based on their respective "capital accounts", consisting of their capital, surplus and undivided profits, as of December 31, 1952.

5. Prior thereto plaintiff, Michigan National Bank, filed its intangibles tax return, a photostatic copy of which is appended hereto marked Exhibit 1, pursuant to the provisions of Act 301 of the Public Acts of 1939 (of which said Act 9 of the Public Acts of 1953 is an amendment), and paid to defendants a total tax on deposits of \$100,318.24, plus a total tax on the shares of stock of said plaintiff of \$18,500.00, for a total payment of \$118,818.24. Said tax so paid was for the calendar year 1952, based upon plaintiff's statement of condition as of December 31, 1952.

Subsequently, defendant, Louis M. Nims, State Commissioner of Revenue, on May 20, 1953, gave notice in writing to plaintiff, Michigan National Bank, of "intent to assess" a deficiency of \$49,680.87, with interest in the sum of \$248.40, being a total of \$49,929.27, which deficiency consisted wholly of the tax levied pursuant to said Act 9 of the Public Acts of 1953, over and above the tax under the other provisions of Act 301 of the Public Acts of 1939 (of which said Act 9 is an amendment), which tax under said other provisions had theretofore been paid by plaintiff. A copy of said notice of intent to assess said deficiency is attached to plaintiff's Petition and Statement of Claim as Exhibit A heretofore filed herein, and is incorporated herein by reference.

Plaintiff, pursuant to its right under said Act 301 of 1939, requested a hearing on said intent to assess be-

fore or with said Department of Revenue, which hearing was had on June 12, 1953. Thereafter and on November 2, 1953, said Commissioner of Revenue by the Deputy Commissioner in writing confirmed the said intent to assess, making the assessment to date November 2, 1953. A copy of said notice confirming said assessment is attached to plaintiff's Petition and Statement of Claim as Exhibit B and is incorporated herein by reference, and a copy of the notice of assessment and demand for payment which accompanied said Exhibit B is attached to plaintiff's Petition and Statement of Claim as Exhibit C and is incorporated herein by reference.

Thereafter, and on November 10, 1953, plaintiff paid the said sum of \$49,929.27, accompanying such payment with a protest in writing delivered therewith, of which protest a copy is attached to plaintiff's Petition and Statement of Claim as Exhibit D and is incorporated herein by reference. The grounds of said protest were:

“(a) said tax is, in the words of the statute levying the same, on the ‘privilege of ownership’ and the privilege of ownership of shares of national banks is not subject to tax by a state; and

(b) the tax is ‘at a greater rate than is assessed upon other monied capital coming into competition with the business of national banks’ and in particular this Bank, and is as to this Bank violative of Section 548 Title XII of the United States Code.”

The said grounds of protest were the same grounds as presented and asserted against said tax at said hearing held June 12, 1953.

Simultaneously upon the making of the aforesaid payment under protest on November 10, 1953, plaintiff,

Michigan National Bank, filed its intangibles tax return under the provisions of said Act 9 of the Public Acts of 1953, a copy of which is appended hereto marked Exhibit 2, based upon its capital account as of December 31, 1952, which return showed a total tax due on said stock of plaintiff of \$68,180.87, instead of the tax previously assessed as shown in Exhibit 1 of \$18,500.00, which, under said Act 9, was "for the privilege of ownership" of said stock.

6. Similarly, each of the intervening plaintiffs paid the intangibles tax upon its deposits and upon its shares of stock under the provisions of Act 301 of the Public Acts of 1939, and thereafter, following the procedures set forth in the Intervenor's Petition and Statement of Claim, made payments of the amounts assessed and levied against their shares of stock by defendant, Louis M. Nims, State Commissioner of Revenue, all as set forth in the aforesaid Intervenor's Petition and Statement of Claim heretofore filed in this cause.

7. During the same period defendant, State of Michigan, levied and collected from certain domestic associations (or their shareholders) in Michigan, known as building and/or savings and loan associations, a tax for the calendar year 1952 of only $1/25$ of 1% (.40 cents per \$1,000.00) on the paid-in value of their shares of stock, which excluded the surplus, undivided profits and legal reserves of such associations (C. L. '48, Sec. 205.132; M. S. A. Sec. 7.556(2) and $1/4$ mill (.25 cents per \$1,000.00) on their capital and legal reserve, which excluded the surplus, undivided profits and other reserves of such associations (pursuant to Sec. 4a of Act 85 of the Public Acts of 1921, as amended by Act No. 33 of the Public Acts of 1927 (C. L. '48, Sec. 450.304A; M. S. A. Sec. 21.206)) as of June 30, 1952, and also as of

June 30, 1953, or a total tax of .65 cents per \$1,000.00 on their capital and shares.

For the calendar year 1952 the defendant, State of Michigan, levied and collected from certain federal savings and loan associations (or their shareholders), organized under the Federal Home Owners Loan Act and doing business in Michigan, a tax of $1/25$ of 1% (.40 cents per \$1,000.00) on the paid-in value of their shares of stock, which excluded surplus, undivided profits and legal reserves of such associations (C. L. '48, Sec. 205.132; M. S. A. Sec. 7.556(2)).

Hence, for the year 1952, defendant, State of Michigan, levied and collected a tax on national bank shares (including those of plaintiff and intervening plaintiffs) at a rate of \$5.50 per \$1,000.00, which rate was more than eight (8) times the equivalent tax rate on domestic building and/or savings and loan associations (.65 cents per \$1,000.00) and more than thirteen (13) times the equivalent tax rate on federal savings and loan associations (.40 cents per \$1,000.00). For the reasons hereinafter set forth, such building and/or savings and loan associations or their shares constituted "moneyed capital" employed in competition with plaintiff national bank and intervening national banks in the localities where they did business, and the rate of taxation of national bank shares (including those of plaintiff and intervening plaintiffs) was clearly and substantially higher than that levied and collected from such other "moneyed capital" represented by such building and/or savings and loan associations or their shares.

8. In addition to the foregoing taxes assessed upon its shares of stock and collected from plaintiff, Michigan National Bank, and from intervening plaintiffs, de-

endant, State of Michigan, also levied and collected from said plaintiff (see Exhibit 1) and intervening plaintiffs, for the calendar year 1952, an intangibles tax pursuant to Sec. 2 of Act 301 of the Public Acts of 1939 (C. L. '48, Sec. 205.132; M. S. A. Sec. 7.56(2)) at the rate of $1/25$ of 1% on their respective deposits, as of December 31, 1952, whereas savings and/or building and loan associations not having deposits nor permitted to have deposits were not subject to any such tax.

The State of Michigan by law imposes no other taxes upon and collects no tax from any of said savings and/or building and loan associations in competition with plaintiff and intervening plaintiffs at a rate different than that imposed upon and collected from plaintiff and intervening plaintiffs, except that said savings and/or building and loan associations are subject to the personal property tax (C. L. '48, Sec. 211.8 et seq.; M. S. A. Sec. 7.8 et seq.), to which national banks are not subject; but in practice none of said savings and/or building and loan associations in competition with plaintiff and intervening plaintiffs were assessed or required to pay any such tax for the year 1952.

9. There were located in 1952 and prior thereto in each of the cities and localities where plaintiff, Michigan National Bank, had its offices and did business, the following domestic and federal savings and/or building and loan associations:

Affidavit of Merits

<u>City</u>	<u>Bank</u>	<u>Savings and Loan Associations</u>
<i>Battle Creek</i>	Michigan National Bank 1 W. Michigan Ave.	<i>Calhoun Federal Savings & Loan</i> (federal) 15 Capital Ave., N. E. <i>Industrial Savings & Loan</i> (state) 8 W. Michigan Ave.
<i>Flint</i>	Michigan National Bank 503 S. Saginaw St.	<i>First Federal Savings & Loan</i> (federal) 126 W. Kearsley St. <i>Detroit & Northern Savings & Loan</i> (state) 529 Harrison
<i>Grand Rapids</i>	Michigan National Bank	<i>Grand Rapids Mutual Federal Savings & Loan</i> (federal) 201 Monroe Ave. N. W. <i>Mutual Home Federal Savings & Loan</i> (federal) 88 Market Ave. N. W. <i>West Side Federal Savings & Loan</i> (federal) 410 Bridge St. N. W.
<i>Lansing</i>	Michigan National Bank 124 W. Allegan	<i>Capitol Savings & Loan</i> (state) 112-4 E. Allegan <i>Lansing Savings & Loan</i> (state) 117 W. Allegan <i>Union Bldg. & Loan</i> (state) 121 W. Allegan <i>East Lansing Savings & Loan</i> (state) 303 Abbott Road
<i>Marshall</i>	Michigan National Bank 124 W. Michigan	<i>Marshall Savings & Loan</i> (state) 227 E. Michigan <i>Homestead Savings & Loan</i> (state) 403 S. Superior, Albion, Mich.
<i>Port Huron</i>	Michigan National Bank 800 Military St.	<i>Citizens Federal Savings & Loan</i> (federal) 511 Water St.
<i>Saginaw</i>	Michigan National Bank 501 Lapeer St.	<i>First Savings & Loan</i> (state) 124 S. Jefferson <i>Saginaw Savings & Loan</i> (state) Michigan Ave. at Cass

10. There were located in 1952 and prior thereto, in each of the localities where intervening plaintiffs had their offices and did business, the following domestic and federal building and/or savings and loan associations:

<u>City</u>	<u>Bank</u>	<u>Savings and Loan Associations</u>
Houghton	Houghton National Bank	Detroit and Northern Savings & Loan (state) 200 Quincy St., Hancock, Mich.
Iron Mountain	Commercial National Bank of Iron Mountain	Detroit and Northern Savings & Loan (state) 200 Quincy St., Hancock, Mich. Iron River Savings & Loan (state) 425 Third Ave., Iron River, Mich.
Jackson	National Bank of Jackson 120 W. Michigan Ave.	First Federal Savings & Loan (federal) 131 South Mechanic St. Security Savings & Loan (state) Francis St. at Otsego Ave.
Kalamazoo	First National Bank and Trust Company of Kalamazoo 108 E. Michigan Avenue	Fidelity Federal Savings & Loan (federal) 315 S. Burdick St. First Federal Savings & Loan (federal) 346 W. Michigan Ave. Kalamazoo Building and Savings (state) 215 E. Michigan Ave.
Three Rivers	First National Bank	Three Rivers Savings & Loan (state) 101 N. Main St.
Wyandotte	The National Bank of Wyandotte 3058 First St.	Down River Federal Savings & Loan (federal) 2959 Biddle Ave. Guaranty Savings & Loan (state) 2913 Biddle Ave.

11. Since defendants, in their Statement of Position (pp. 8, 14), heretofore filed herein, have asserted that the tax rate upon savings and/or building and loan associations was not discriminatory in their favor be-

cause they "were subject to an annual privilege tax equal to 4 mills of the amount of their capital and surplus" under Section 4 of Act 183 of the Public Acts of 1952 (C. L. '48, Sec. 450.304; M. S. A. Sec. 21.205) instead of $\frac{1}{4}$ mill per dollar of capital and legal reserve, under Section 4a of said Act, as plaintiff and intervening plaintiffs contend, the following is called to the Court's attention.

Neither the Michigan Corporation and Securities Commission nor the Secretary of State of Michigan has ever collected a tax of 4 mills upon the capital and surplus of any savings and/or building and loan association doing business in the State of Michigan (including those associations listed in Paragraphs 9 and 10 hereof). Nor has the Michigan Corporation and Securities Commission, since its inception in 1935 to the date hereof, ever received any reports or collected any fees or taxes of any kind whatsoever from any savings and/or building and loan associations under Act 85 of the Public Acts of 1921, as amended, or otherwise. The only annual privilege tax that has ever been collected by the State of Michigan from any savings and/or building and loan association (including those associations listed in Paragraphs 9 and 10 hereof) from 1927 to date has been collected by the Secretary of State of Michigan annually at the rate of $\frac{1}{4}$ of a mill upon their capital and legal reserve, and this tax was not assessed upon nor collected from any federal savings and/or building and loan association doing business in Michigan prior to 1954 (including those associations listed in Paragraphs 9 and 10 hereof).

Since 1927 to the date hereof, neither the Secretary of State of Michigan nor the Michigan Corporation and Securities Commission ever attempted to assess, collect

or ~~levy~~ any annual privilege tax from any saving and/or ~~building~~ and loan association at a greater rate than $\frac{1}{4}$ of a mill on their capital and legal reserve, as was specifically provided for by Section 4a of said Act 85 of the Public Acts of 1921, as amended by Act 33 of the Public Acts of 1927.

Such long and consistent interpretation and administration of the law in question by those State officials charged with the administration thereof, if not decisive of the legislative intent, is at all events, given great weight in the construction and interpretation of such law (*People v. Michigan Central Railway Co.*, 145 Mich. 140, 149; *Boyer-Campbell Co. v. Fry*, 271 Mich. 282, 296; *Commissioner v. South Texas Co.*, 333 U. S. 496, 501).

Even if the annual privilege tax law provided for a payment by savings and/or building and loan associations of an annual privilege fee at a rate such as defendants contend, nevertheless, since in practice and in fact the State of Michigan and its officials administering and applying said law have only collected and sought to collect an annual privilege tax for 1952 from state associations of $\frac{1}{4}$ of a mill, as aforesaid, and no tax at all from such federal associations, there is a clear and substantial discrimination in the rate of taxation on the shares of national banks (including those of plaintiff and intervening plaintiffs), and in favor of moneyed capital of said associations in substantial competition with them, as will be hereinafter fully set forth (*Whitbeck v. Mercantile National Bank of Cleveland*, 127 U. S. 193; *Iowa-Des Moines National Bank v. Bennett*, 284 U. S. 239, 241-5).

12. Plaintiff, Michigan National Bank, as a national banking association organized under the laws of the United States, is required by law to file with the Comptroller of the Currency of the United States a sworn re-

port of its condition at the close of business on December 31st of each year. Such a report of condition was filed as at the close of business on December 31, 1952, showing the condition of the plaintiff as of that date. A photostatic copy of such report is attached hereto marked Exhibit 3. Such report truly and correctly reflected the financial condition of plaintiff at the close of the calendar year 1952, which is the year involved in this litigation. Further, such report was the report used by plaintiff in the preparation of its Michigan intangibles tax return(Exhibit 2) as required by said Act 9 of the Public Acts of 1953 (which is the Act in question in this suit) said report being " * * * the report as of the latest date during the year for which the tax is imposed (1952) prepared by such * * * bank * * * for the public authority having general regulatory supervision over it * * * ."

As appears from said Exhibit 3 on line 6 thereof, plaintiff as at December 31, 1952, had total loans and discounts (including \$8,266.07 overdrafts) of \$146,411,387.26. Schedule A, appearing on the reverse side of said Exhibit 3, breaks down said total loans and discounts. Said Schedule A shows that plaintiff as at December 31, 1952, had the following real estate loans (Schedule A, line 6(a), 6(b)(1), (2), (3) and 6(c)):

6(a)	Real state loans secured by farm land (including improvements) ..	\$ 445,462.56
(b)	Real estate loans secured by residential properties (other than farm)	
(1)	Insured by Federal Housing Administration	26,944,797.52
(2)	Insured or guaranteed by Veterans Administration	9,289,591.61
(3)	Not insured or guaranteed by FHA or VA	15,185,470.71
(c)	Real estate loans secured by other properties	10,209,699.79
Total real estate loans.....		\$62,975,028.19

As appears from said report and as was in fact the case, of plaintiff's total loan business (before deduction for bad debt reserve), \$62,075,029.19, or approximately 42% of its total loan business, consisted of real estate loans; further, of said total real estate loans, \$51,419,859.84 or approximately 83% of said total real estate loans, were loans secured by residential properties (other than farm).

13. Each of said banking offices of plaintiff, Michigan National Bank, were substantially engaged in their locality in the business of loaning money on the security of real estate, primarily residential property. Each banking office of plaintiff, in the regular and usual course of its business, prepared each month a statement of its condition, which it was required to and did forward to the principal office of plaintiff at Lansing, Michigan. Such reports were made immediately after the end of

each month and truly and correctly reported the financial condition of each office as of the last day of the month reported on. Attached hereto are photostatic copies of financial reports of each of plaintiff's offices as of December 31, 1952, marked as follows: Battle Creek (Exhibit 4 a), Flint (Exhibit 4 b), Grand Rapids (Exhibit 4 c), Lansing (Exhibit 4 d), Marshall (Exhibit 4 e), Port Huron (Exhibit 4 f) and Saginaw (Exhibit 4 g). Said Exhibits show the following data as regards each office, with respect to real estate loans as of December 31, 1952:

Battle Creek (Exhibit 4 a)

F. H. A. Real Estate Loans	\$ 4,644,691.16
Regular Real Estate Loans	5,800,804.59
	<hr/>
Total Real Estate Loans	\$10,455,495.75

Flint (Exhibit 4 b)

F. H. A. Real Estate Loans	\$ 6,561,609.20
Regular Real Estate Loans	5,489,040.97
	<hr/>
Total Real Estate Loans	\$12,050,650.17

Grand Rapids (Exhibit 4 c)

F. H. A. Real Estate Loans	\$ 4,559,749.21
Regular Real Estate Loans	2,831,531.64
	<hr/>
Total Real Estate Loans	\$ 7,391,280.85

Lansing (Exhibit 4 d)

F. H. A. Real Estate Loans	\$ 5,991,894.98
Regular Real Estate Loans	5,103,184.57
	<hr/>
Total Real Estate Loans	\$11,095,079.55

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Marshall (Exhibit 4 e)

F. H. A. Real Estate Loans.....	\$ 485,189.29
Regular Real Estate Loans.....	\$ 1,248,271.08
	<hr/>
	\$ 1,733,460.37

Port Huron (Exhibit 4 f)

F. H. A. Real Estate Loans.....	\$ 2,696,120.98
Regular Real Estate Loans.....	7,211,271.43
	<hr/>

Total Real Estate Loans..... \$ 9,907,392.41

Saginaw (Exhibit 4 g)

F. H. A. Real Estate Loans.....	\$ 2,005,542.70
Regular Real Estate Loans.....	7,132,551.38
	<hr/>

Total Real Estate Loans..... \$ 9,138,094.08

As used in Exhibits 4 a through g, the term "F. H. A. Real Estate Loans" covered all real estate loans secured by residential properties (other than farm) insured by the Federal Housing Administration, which loans are more fully described hereinafter, and is the same as item 6.(b)(1) of Schedule A to Exhibit 3. As used in said Exhibits 4 a through 4 g, the term "Regular Real Estate Loans" covered all real estate loans secured by residential properties (other than farm) insured or guaranteed by Veterans Administration and those real estate loans on such property not insured or guaranteed by F. H. A. or V. A. or the same as items 6 (b) (2). and (3) of Schedule A to Exhibit 3.

14. The savings and/or building and loan associations, both domestic and federal, are required by law and

do in fact publish reports of their financial condition, which reports show, among other items, their real estate loans outstanding, secured either by mortgages on real estate or land contracts as of the date of the report. The associations listed in paragraph 9 above and which were doing business in 1952 in the localities where plaintiff's banking offices were located, published said reports showing their respective financial conditions as of December 31, 1952. Attached hereto are summaries of such reports, showing the financial condition of each association as of December 31 of each year from 1950 through 1957, including December 31, 1952 (except where otherwise indicated); such summaries are marked Exhibits 5a through 5p. As appears from these exhibits, such associations held real estate mortgages and land contracts in the following amounts as of December 31, 1952.

Battle Creek

Calhoun Federal Savings & Loan (Exhibit 5a)	\$ 9,218,354
Industrial (now Peoples) Savings & Loan (Exhibit 5b)	5,595,285
Total	\$ 14,813,639

Flint

First Federal Savings & Loan (Exhibit 5c) \$	6,455,542
*Detroit and Northern Savings & Loan (Exhibit 5d)	21,020,355
Total	\$ 27,475,807

*Detroit and Northern Savings and Loan Association also does a mortgage business in cities other than Flint, Michigan, the exact extent of which is not known; however, its mortgage business in the Flint area represents a substantial part of the above figure.

Affidavit of Merits

45a

Grand Rapids

Grand Rapids Mutual Federal Savings & Loan (Exhibit 5e)	\$ 13,180,745.
Mutual Home Federal Savings & Loan (Exhibit 5f)	11,555,850
West Side Federal Savings & Loan (Exhibit 5g)	3,548,253
Total	\$ 28,284,848

Lansing

**Capitol Savings & Loan (Exhibit 5h)...	\$ 18,785,443
Union Building & Loan (Exhibit 5i).....	5,139,076
Lansing Savings & Loan (Exhibit 5j) (subsequently merged with Union Savings & Loan)	1,259,325
East Lansing Savings & Loan (Exhibit 5k) (as of June 30, 1952).....	3,484,401
Total	\$ 28,668,245

Marshall

Marshall Savings & Loan (Exhibit 5l).....	\$ 639,623
Homestead Savings & Loan (Exhibit 5m) Albion, Michigan (as of June 30, 1952)	604,727
Total	\$ 1,244,350

**Capitol Savings and Loan also does a mortgage business in Detroit and Pontiac, Michigan, the exact extent of which is not known; however, its mortgage business in the Lansing area represents a substantial part of the above figure.

Port Huron

Citizens Federal Savings & Loan (Exhibit
5n) \$ 6,481,879

Saginaw

Saginaw Savings & Loan (Exhibit 5o).... \$ 6,249,582
First Savings & Loan (Exhibit 5p) (as of
June 30, 1952)..... 12,975,551

Total \$ 19,225,133

Total Mortgages and Land Contracts
of all Associations \$126,193,901

As appears from the above savings and loan associations doing business in the seven cities and counties where plaintiff has its banking offices, held real estate loans secured by mortgages and land contracts as of December 31, 1952 (except where indicated) of \$126,193,901, compared with plaintiff's total mortgages as set forth in paragraph 12 above, of \$62,075,029.

15. In all cases plaintiff during the year 1952, recorded its real estate mortgages with the register of deeds for the county in which the real estate securing the mortgage was located. In all cases the consideration stated in said recorded mortgage represented the amount loaned on the security or committed to be loaned. It is believed that all of the savings and loan associations listed in paragraph 9 hereof did likewise during the year 1952. The following appears from the records of the register of deeds for the year 1952 for each county in which plaintiff had its banking offices, all as shown on the abstract of mortgages heretofore served on defendants with plaintiff's notice of intention to use such abstract as evidence at the trial of this cause:

REAL ESTATE MORTGAGE RECORDINGS BY COUNTY IN 1952

County	Mortgagee	No. of Mortgages	Amount
Calhoun (Battle Creek, Marshall)	Michigan National Bank...	599	\$ 3,563,215.49
	All other banks and Trust companies	338	2,070,799.20
	Building and/or savings and loan associations	1,355	5,655,375.13
	Insurance companies	101	1,120,500.00
	Credit unions	1	15,192.00
	Other corporations	258	2,114,011.50
	Individuals	364	2,107,198.37
	Total—Calhoun	3,016	\$16,646,291.69
Genesee (Flint)	Michigan National Bank...	505	\$ 3,591,185.63
	All other banks and trust companies	3,932	21,590,057.63
	Building and/or savings and loan associations	678	4,154,887.27
	Insurance companies	203	1,485,155.00
	Credit unions	15	60,548.84
	Other corporations	475	3,310,767.20
	Individuals	417	1,694,885.84
	Total—Genesee	6,225	\$35,887,487.41
Ingham (Lansing)	Michigan National Bank...	351	\$ 4,320,815.00
	All other banks and trust companies	1,051	5,675,811.24
	Building and/or savings and loan associations	859	5,256,121.12
	Insurance companies	311	4,144,296.62
	Credit unions	72	281,808.05
	Other corporations	342	3,366,271.66
	Individuals	508	2,471,404.40
	Total—Ingham	3,494	\$25,516,528.06

Affidavit of Merits

County	Mortgagee	No. of Mortgages	Amount
Kent (Grand Rapids)	Michigan National Bank...	589	\$ 5,409,112.17
	All other banks and trust companies	1,866	12,636,990.36
	Building and/or savings and loan associations	1,474	9,383,370.12
	Insurance companies	521	6,256,625.00
	Credit unions	64	267,722.03
	Other corporations	512	4,313,320.74
	Individuals	848	3,591,160.58
	Total--Kent	5,874	\$41,858,301.90
Saginaw (Saginaw)	Michigan National Bank...	387	\$ 3,046,417.09
	All other banks and trust companies	889	4,699,096.25
	Building and/or savings and loan associations	1,512	8,087,550.42
	Insurance companies	121	1,133,978.92
	Credit unions	5	18,065.00
	Other corporations	69	662,494.85
	Individuals	313	1,505,955.36
	Total--Saginaw	3,296	\$19,153,557.89
St. Clair (Port Huron)	Michigan National Bank...	503	\$ 3,159,161.95
	All other banks and trust companies	789	3,912,714.78
	Building and/or savings and loan associations	620	3,038,242.21
	Insurance companies	30	197,800.00
	Credit unions	15	61,931.32
	Other corporations	10	56,708.00
	Individuals	254	1,078,321.79
	Total--St. Clair	2,221	\$11,504,880.05

RECAPITULATION OF REAL ESTATE MORTGAGES RECORDED
IN CALHOUN, GENESEE, INGHAM, KENT, SAGINAW
AND ST. CLAIR COUNTIES DURING 1952

Mortgagee	No. of Mortgages	Amount
Michigan National Bank.....	2,934	\$ 23,089,907.33
All other banks and trust companies.....	8,865	50,585,469.43
Building and/or savings and loan associa- tions	6,498	35,575,546.27
Insurance companies	1,287	14,338,355.54
Credit unions	172	705,267.24
Other corporations	1,666	13,823,573.95
Individuals	2,704	12,448,926.34
Total—All Counties	24,126	\$150,567,046.10

16. Since 1935 to and in 1952 and to date national and state banks in general, and plaintiff national bank in particular, have with increasing vigor sought and made loans secured by mortgages upon residential property, with the view of obtaining and building up a large portion of their respective banking business operations—and in such phase of plaintiff's operation, which is substantial, the associations listed in paragraph 9 hereof, since prior to 1952, in 1952 and to date, employed their capital in sharp and keen competition with plaintiff for such mortgage business in the areas in which said associations and plaintiff operate. Substantially all of said mortgage loans by plaintiff and said associations were made on the security of such real estate and were not taken to secure pre-existing liabilities or as additional security for personal loans. Plaintiff was authorized by law and its charter and by-laws to make such loans. As at December 31, 1952, said associations listed in paragraph 9 hereof had made loans secured by mortgages on residential property, with unpaid balances as of such date, in a principal amount in excess of \$125,-

000,000 as compared with unpaid balances on such date on comparable mortgage loans of plaintiff, of approximately \$50,000,000, or more than 12% greater than such mortgage loans obtained by plaintiff.

17. Since 1913, to and in 1952, and to date, national banks in general, and plaintiff in particular, have solicited savings and time deposits, at interest, to encourage thrift by their depositors and to develop an important and profitable phase of their respective businesses. In the development of such business, plaintiff has been obliged to increase interest rates to a level which would attract such deposits in competition with savings and/or building and loan associations paying equal or increasingly greater dividends to shareholders who invest in shares of such savings and/or building and loan associations, including those listed in paragraph 9 hereof. Discrimination in tax rates on plaintiff's bank shares in favor of state taxes upon the shares or moneyed capital of said savings and/or building and loan associations, in competition with them, has tended to increase their profits because of such competitive advantage in their operations comparable to the plaintiff's mortgage operations, with the result that said associations have been enabled to increase their dividend rate and thus to attract and to increase the savings investments in said associations, thereby making available greater capital to said associations and used by them in making loans secured by mortgages in competition with the substantial and important mortgage loan business of plaintiff bank.

As at December 31, 1952, said associations listed in paragraph 9 hereof, had outstanding in savings shares, excluding surplus, undivided profits, and reserves (as appears from Exhibits 5a through 5p), in excess of

\$130,000,000 as compared with time or savings deposits of plaintiff bank of \$117,889,167 (as appears from Exhibit 3).

18. Since the inception of savings and/or building and loan associations in Michigan in 1887, the nature and character of the operations of savings and/or building and loan associations, including those listed in paragraph 9 thereof, has materially and substantially changed.

A. Such associations originally and up to 1935 were comparatively small in size and in scope of operation. Thereafter, their growth and increased scope and volume of business have made them powerful financial institutions with total assets in the United States as at December 31, 1957 in excess of \$48,000,000,000 as compared with total assets of all banks in the United States of \$203,600,000,000. In Michigan, the striking growth in such associations has taken place substantially since 1943. As of 1943, the total assets of 71 associations in Michigan (both state and federal) was \$145,784,930, whereas by June 30, 1955, their assets had increased to \$865,675,818, and by December 31, 1956, such assets had increased to \$1,057,000,000.

B. The capital of the savings and/or building and loan associations in competition with plaintiff and intervening plaintiffs (listed in paragraphs 9 and 10 hereof) and others operating in the State of Michigan, prior to 1952, in 1952 and thereafter, was and is from investors of all economic and income levels and classes. Their investments are evidenced by "share accounts" or "certificates" and such investors become and are the owners of shares of stock in such corporations (*Michigan Saving & Loan Association v. Finance Commission*, 347 Mich. 311). They are not creditors of said asso-

ciations, but are shareholders who assume the risk of gain or loss in operations. They receive no interest, but only dividends on shares as earned and declared. No fixed rate of dividend is guaranteed or assured. Shareholders have the right to vote for the election of Association Management.

Said associations, during said period, by advertisements (newspaper, radio, television and direct mail) appealed to and obtained as shareholders savings investors of all economic and income classes and levels. These investors were not limited only to small investors or poor people (as obtained in respect to such type associations as they in general were originally and for years operated), and are predominantly from the middle and higher income classes. There was then, but in recent years prior to 1952 and thereafter there was and is now, no limit or ceiling upon the amount any investor might invest in shares of said associations, with minor exception. Shares in said associations during said period and at present are purchased and owned by fiduciaries and trustees of estates of all sizes, by private businesses, by insurance companies and other financial institutions, in addition to persons of all economic and income classes.

Thus, the class and type of investors in said associations has materially changed from those who originally invested in savings and/or building and loan associations as originally organized and particularly for the period from 1933 to date. Such investors were and are basically of the same, if not higher, economic classes and levels, as persons who during said period deposited their savings in savings accounts with plaintiff and intervening plaintiffs and other banks.

During said period most investors in shares in said associations were purely investors and only a small number in numbers and amounts borrowed money from said associations for residential mortgages or otherwise. Anyone wishing to do so could and did then and still can invest in shares of said associations.

C. Virtually all of the capital obtained by said associations from investors in shares during said period, and particularly in 1952 and thereafter, was used by said associations to loan to borrowers, secured by mortgages. Most of the loans were secured by mortgages on residences having values not to exceed \$40,000. Some of said associations loaned moneys, secured by mortgages on commercial properties, and in some instances such mortgage loans exceeded \$250,000.

Said mortgage loans made by said associations, listed in paragraph 9 hereof, in 1952 were basically of the type and character as those made by plaintiff bank in 1952; FHA, Veterans and Conventional. Said loans were of the same average amounts and were secured by mortgage upon the same type and class of residences and other property which were in the same general area as those which secured loans of plaintiff bank.

The borrowers from said associations, listed in paragraph 9 hereof, in 1952 were from all economic and income levels, and were not of a lower (if anything, they were of higher) economic and income level than mortgage borrowers from plaintiff bank.

Said associations, listed in paragraph 9 hereof, in 1952 solicited and advertised for mortgage loans (by newspaper, radio, television, direct advertising and personal solicitation) from all classes of home owners and from prospective borrowers of all economic and income

levels. Few borrowers were shareowners or members before they applied for or were solicited for loans. No borrower from such associations was required to be an investor in shares in said associations and only became a member upon being granted a loan, which membership cost the borrower nothing and is a mere formality without substance.

Borrowers from such associations (listed in paragraph 9 hereof) applied for mortgage loans upon essentially the same forms of loan applications as employed by plaintiff bank, and such applications were processed in essentially the same manner. Likewise, the loans were granted or denied by such associations, as they were by plaintiff bank, dependent upon the financial worth and credit of the applicant and the appraised value of the property to be mortgaged as security.

I. Said associations, competing with plaintiff, have offices in cities where plaintiff operates in its offices, in modern, spacious buildings similar in appearance to that of banks, both inside and outside, suggesting financial stability and comparable operations to those of banks.

E. Unlike the old type of savings and/or building and loan associations, where savings investors from the lower income levels were permitted to make only limited periodic savings investments, and borrowers were investors in the shares, the present modern associations, described above, have no such requirements—investors in shares may be solely investors, without limitation, and not borrowers, and borrowers need not be investors in shares of such associations and may borrow like amounts secured by mortgages as they can from plaintiff bank.

Investors invest in shares of such associations primarily for the return they can get by investing in a

corporation whose operations are primarily in the residential mortgage business. There is actually no mutuality between borrowers and investors and both are from all economic and income class groups.

The investors in said associations are no more encouraged to thrift and savings by investing in said associations than are depositors who make savings or time deposits with plaintiff bank. Nor is the building of small homes by poor people—or for that matter, from any economic and income class level—more encouraged or furthered by loans from such associations than from mortgage loans made by plaintiff bank, with whom said associations are sharply in competition for the residential mortgage business in their respective trading areas.

F. On December 31, 1946, total assets of savings and/or building and loan associations in the United States were slightly in excess of \$10,000,000,000. By year end 1956 such assets approximately \$43,000,000,000. Exhibit 13a is a table showing the number of such associations and their total assets for the period from 1900 to 1956, inclusive. This table is from a report from the Federal Home Loan Bank Board.

G. As at December 31, 1956, savings and/or building and loan associations in the United States had mortgage loans in excess of \$36,500,000,000, representing more than one-third of all recorded home mortgages in the United States.

In 1956 the total amount of mortgage loans made by savings and/or building and loan associations in the United States exceeded \$10,000,000,000 for the second successive year.

H. As at year end 1956 investors in savings and/or building and loan shares had invested in excess of \$37,000,000,000 and such investments were held by approximately twenty million persons. As at that time there were approximately 6,100 savings and/or building and loan associations in the United States.

19. A. Exhibit 6 attached hereto is a consolidated statement as at December 31, 1952, of assets and liabilities of all sixty-three state and federal savings and/or building and loan associations which operated in Michigan in 1952, showing a total amount of assets of \$534,314,000, first mortgage loans of \$420,871,000 and savings capital shares of \$465,468,000. Said exhibit is a copy from the published report of the combined financial statements of the Home Loan Bank Board for the year 1952: Exhibit 6a is a table showing home mortgage recordings by states for the year 1956 and comparing the dollar amount of such mortgages recorded by savings and/or building and loan associations and commercial banks in Michigan. This table is from a report of the Federal Home Loan Bank Board.

B. Exhibit 7 attached hereto is a tabulation of savings of individuals in selected types of media in the United States for each of the years 1920 to 1956, inclusive showing the amount in saving shares of savings and/or building and loan associations in the United States, as compared with savings in commercial banks in the United States, showing an increase in the amount of such saving shares in the year 1933 of \$4,800,000,000 to \$19,200,000,000 in 1952, as compared with savings in commercial banks in 1933 of \$11,000,000,000 as compared with such savings in 1952 of \$39,300,000,000. Said Exhibit 7 is a copy of a report published by the Home Loan Bank Board.

C. Exhibit 8 is a tabulation of non-farm home owners in each of the various income brackets in the United States, which exhibit is a copy of a Federal Reserve Board Report.

D. Exhibit 9 is a table showing the average construction costs of new private one-family houses started in the years 1946-1956 showing that the average cost for the year 1952—as distinguished from the selling price—amounted to \$9,475.00. This exhibit is from the report of the United States Department of Labor.

E. Exhibit 10 is a table showing a mortgage debt on non-farm homes by type of lender in the United States for the years 1940 to 1956, inclusive, showing the dollar amount of mortgage debt owned by savings and/or building and loan associations and those owned by commercial banks, which exhibit is from a report of the Federal Home Loan Bank Board.

F. Exhibit 11 is a table showing the non-farm mortgage recordings by type of lender in the United States for the years 1940 to 1956, inclusive, comparing, among other things, the total amount of mortgages recorded by savings and/or building and loan associations as compared with that of commercial banks. This exhibit is from the report of Federal Home Loan Bank Board.

G. Exhibit 12 is a table showing the proportion of home mortgage by type of lenders in the United States for the years 1940 to 1956, inclusive, showing the percentage of such mortgages based upon dollar volume owned by savings and/or building and loan associations and compared with commercial banks. This exhibit is a copy of a report from the Federal Home Loan Bank Board.

H. Exhibit 13 is a table of V. A. guaranty home loans originated by type of lender in the United States for the years 1948 to 1956, inclusive, and of F. H. A. insured home mortgage loans originated by type of lender in the United States for the years 1948 to 1956, inclusive, showing the amounts originated by savings and/or building and loan associations as compared with that of commercial banks. The exhibits relating to the V. A. loans is based upon a report of the Veterans' Administration of the United States and the portion of the exhibit relating to F. H. A. insured home mortgage loans is based upon a report of the Federal Housing Administration.

I. Exhibit 14 is a table showing the total liabilities of all savings and/or building and loan associations in the United States for the years 1929 to 1956, inclusive, and in particular showing the amount of saving share accounts dollarwise and reserves and undivided profits. Among other things, the report shows the growth in such saving share accounts from \$4,310,000,000 in 1935 to \$19,195,000,000 in 1952 to \$37,300,000,000 in 1956. This table is from a report of the Federal Home Loan Bank Board.

J. Exhibit 15 is a table showing the purpose and amounts of loans made by savings and/or building and loan associations in the United States for the years 1936 to 1956, inclusive. The table is from a report of the Federal Home Loan Bank Board.

K. Exhibit 16 is a consolidated statement (abstracted from the Report of the Secretary of State of Michigan) showing the assets and liabilities of all state savings and/or building and loan associations in Michigan as at June 30, 1952 and June 30, 1953.

L. All abstracts, synopses and copies of public records heretofore served upon defendants and referred to in plaintiff's Notice of Intention heretofore filed herein are hereby offered as evidence, and the contents thereof are hereby incorporated herein by reference.

•M. Exhibit 17 shows the total of mortgage shares, and total assets of the savings and/or building and loan associations in the United States for the period from 1941 through January 1958.

Exhibit 18 shows the mortgage activities of such associations for the period from 1941 through 1958 by types of mortgages.

Exhibit 19 shows the total of mortgage loans and types of mortgages held by banks in the United States for the period from 1941 through 1957.

Exhibit 20 shows the total assets and liabilities, including time deposits of all banks in the United States for the period from 1939 through February, 1958.

Exhibits 17 through 20 are from the Federal Reserve Board Report and Bulletin of April, 1958.

20. That on the facts as set forth in the pleadings together with the exhibits attached thereto, on admission of defendants heretofore made, on the facts set forth in the Affidavit of Merits and the exhibits hereto, and the depositions heretofore taken (with the accompanying exhibits) of the following persons: George L. Young, President, Grand Rapids Mutual Federal Savings and Loan Association, Harold O. Swanson, President, Mutual Home Federal Savings and Loan Association, John H. Weatherwax, Secretary and Manager, West Side Federal Savings and Loan Association, and James H. Jerome, Executive Vice President, First Savings and

Loan Association, which are filed herewith, deponent believes that defendants are not entitled to a summary judgment of no cause of action against either plaintiff or intervening plaintiffs and that accordingly their motion for summary judgment should be denied and the cause proceed to trial.

Further deponent sayeth not.

/s/ Russell Fairles.

OPINION

(Filed January 20, 1959)

Plaintiff, a national bank, seeks to recover the amount of \$49,929.27 paid by it under protest to the state. Such sum represented a deficiency assessed against plaintiff for the 1952 intangible tax pursuant to Act No. 9 of the Public Acts of Michigan for 1953 which amended the Intangible Tax Act (Act 301, Public Acts of 1939; M. S. A. 7.556(2a)) with respect to the taxation upon shares of the stock of national and state banks and trust companies.

It is settled law that:

“National banks are not merely private moneyed institutions, but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property and their shares cannot be taxed under state authority except as Congress consents and then only in conformity with the restrictions attached to its consent”. *First National Bank of Anderson*, (269 U. S. 341). *Des Moines Bank v. Fairweather*, 263 U. S. 106.” *First National Bank v. Hartford*, 273 U. S. 548, 550.

See also:

People v. Weaver, 100 U. S. 539;

Talbot v. Silverpaul County, 139 U. S. 138;

First National Bank v. Adams, 258 U. S. 362.

Congress, by appropriate action, has permitted the taxation of shares in national banks subject to certain restrictions. This consent and the restrictions are now found in R. S. Section 5219, which reads in part:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

"(b) In case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business,

shall not be deemed moneyed capital within the meaning of this section." U. S. Code, Title 12, Section 548.

Plaintiff contends that the Michigan Intangible Tax Act fails to meet the requirements of Section 5219 in two particulars: (1) Michigan National Bank shares are taxed at a greater rate than other moneyed capital in the hands of individual citizens coming into competition with the business of the plaintiff bank, (2) that the Michigan Statute levies a tax upon "the privilege of ownership" of shares in national banks, that this is not the legal equivalent of a tax upon the shares in such banks and is not one of the alternate methods of taxation permitted.

Certain other national banks have intervened in the cause asserting that they similarly paid under protest the taxes levied under the amended Intangible Tax Act and seek to recover the amounts so paid. For the purpose of expediting the determination of the legal questions, the intervener action by order of the Court was separated from the trial of the plaintiff's case. The proofs introduced related solely to plaintiff's case and the decision to be made upon this record will adjudicate only that case.

Initially, the moneyed capital alleged by plaintiff to be in competition with it and to be taxed at a lesser rate included building or savings and loan associations, insurance corporations, credit union, finance companies, and monies in the hands of individuals and partnerships.

Shortly before the commencement of trial, plaintiff abandoned its claim insofar as insurance corporations, credit unions, finance companies and individuals and partnerships were concerned and its counsel stated that

it would confine its case to the competition which national banks face in this state with building and savings and loan associations, both state and federal.

The institutions referred to are usually known as "building and loan associations" when organized under state laws, and as "savings and loan associations" when organized under the federal statute. The Michigan Statute is Act No. 50 of the Public Acts of 1887 as amended (M.S.A. 23.541 et seq.) and the Act of Congress is the Home Owners Loan Act of 1933 (U.S.C.A. Section 1464 et seq.)

Plaintiff has its principal banking office in the City of Lansing. It carries on the banking business in that city and in the Cities of Battle Creek, Flint, Grand Rapids, Marshall, Port Huron, and Saginaw.

In these cities there are sixteen building/savings and loan associations.

Without attempting to state in detail the proofs (the record consists of some 1750 pages of transcript, numerous depositions and some hundreds of exhibits), it may be said that plaintiff claims that the proofs bring the case within the rule stated in *First National Bank v. Hartford*, 273 U.S. 548:

"Competition may exist between other moneyed capital and capital invested in national banks, serious in character and therefore well within the purpose of § 5219, even though the competition be with some but not all phases of the business of national banks. Section 5219 is not directed merely at discriminatory taxation which favors a competing banking business. Competition in the sense intended arises not from the character of the business of those

who compete but from the manner of the employment of the capital at their command. * * * To so restrict the meaning and application of §5219 would defeat its purpose. It was intended to prevent the fostering of unequal competition with the business of national banks by the aid of discriminatory taxation in favor of capital invested by institutions or individuals engaged either in similar businesses or in particular operations or investments like those of national banks. *Mercantile Bank v. New York*, supra, 155. With the great increase in investments by individuals and the growth of concerns engaged in particular phases of banking shown by the evidence in this case and in *Minnesota v. First National Bank of St. Paul*, today decided (273 U.S. 561) p. 561, discrimination with respect to capital thus used could readily be carried to a point where the business of national banks would be seriously curtailed. Our conclusion is that §5219 is violated wherever capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business." (557-558).

"We do not conceive that in order to establish the fact of competition it is necessary to show that national banks and competing investors solicit the same customers for the same loans or investments. It is enough as stated if both engage in seeking and securing the same locality capital investments of the class now under consideration which are substantial in amount." (559).

In support of such claim, plaintiff offered a mass of statistical evidence as to the capital, assets, savings accounts, loans and investments of national banks, nationally, ~~state-wide and of the plaintiff national bank~~. Like evidence was offered as to the business of the savings/building and loan associations, nationally, state-wide and in the seven cities in which plaintiff did business.

Plaintiff further offered the testimony of officers of the loan associations and of the plaintiff banks as to the existence of competition between the two types of institutions.

And plaintiff forcefully urges that such evidence establishes that both plaintiff and defendant make loans upon the security of mortgages on residential real property and that in that field there exists, in fact, substantial competition between the plaintiff bank and the several savings/building and loan associations.

Plaintiff further contends that the rate of tax levied against the shares of national banks is several times that levied against the shares of savings/building and loan associations.

Defendants take issue with plaintiff upon the existence of competition in fact, and upon the existence of discrimination in the rate of tax against the two types of institutions.

With reference to competition, in fact, defendants contend that the savings and loan association operating in the area of plaintiff bank are small institutions as compared to the plaintiff; that they function solely in a very narrow and restricted field compared to the varied activities of plaintiff and other national banks; that the savings and loan associations' basic organization

and financial structure are so different from national banks that they cannot be compared with such institutions; that the alleged competing savings and loan associations concentrate their loans in conventional loan activity prohibited to plaintiff bank while plaintiff concentrated its loan activity in fields (F.H.A. and V.A.) not utilized by the savings and loan associations; that the proofs offered do not sustain a finding that the capital employed by savings and loan associations in 1952 represented a substantial portion of capital employed in any alleged competition by the savings and loan associations with the business of the plaintiff and other national banks; that plaintiff had no difficulty in obtaining all the capital it needed in 1952 and could not trace any part of its capital to any investments and that in 1952 it loaned only its deposit money on security of real estate.

And defendant summarizes its position on this factual issue as follows: "in the last analysis, savings and loan associations cannot be in 'substantial competition with the business of national banks' because they cannot and do not engage sufficiently in the activities characteristically carried on by the national banks. Stated another way, if they are not comparable institutions in substance, how can they be in substantial competition?"

Upon the issue of discrimination, it is defendants' contention that the Michigan Intangible Tax from the standpoint of the economic impact, imposes an equivalent tax burden on national banks and savings and loan associations.

Defendants further present certain serious contentions of law which if decided in favor of defendants, make the determination of the above issues of fact unimportant. These, to a certain extent, overlap and may be briefly

summarized: first, that the states have the power to give preferential tax treatment to thrift and home financing institutions such as mutual savings banks and savings/building and loan associations upon the ground of public policy without violating section 5219; and, secondly, that Congress by the enactment of the 1933 Home Owners Loan Act has made it clear that the provisions of section 5219 do not apply to savings/building and loan associations.

The banks of Michigan are not unanimous in this litigation.

The Michigan Bankers Association has been permitted to file a brief as *amicus curiae* in which it states the position of its members in these words:

"The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of the competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantage among the various types of institutions; and that it has proven to be simple to administer. Such a system is obviously desirable, and this Association, believing the system to be entirely legal within the limitations of the Federal Constitution and Statutes, does not want to see it destroyed."

And their counsel takes substantially the same position upon the several questions presented as does the Attorney General on behalf of the defendants.

Counsel for Michigan Savings and Loan League was likewise given permission to file a brief as amicus. He has not filed a formal brief, but he has by letter contributed to the discussion of the legal issues in this case, particularly with reference to the effect of the 1933 Act of Congress providing for the creating of Federal Savings and Loan Associations.

At the outset, the Court expresses its appreciation of the manner in which this case has been presented. Experienced and able counsel have diligently prepared their cases for trial and the proofs were introduced in an intelligent and effective manner. The briefs of counsel for the parties and for amici have forcefully and persuasively presented their respective views and contentions. What might have been drudgery, has, in fact, been an exceedingly interesting experience in which nearly a century of history of the financial life of the nation, of its legislation and its judicial decisions have been vividly portrayed. The decision of this Court will undoubtedly be appealed and it is believed that the record here made will be adequate to enable the Appellate Court or Courts to arrive at an answer to this question of importance to the states, the national banks and the savings/building and loan associations.

There can be found in the language of the numerous decisions since the passage of the legislation which is now Section 5219 support for the position of each party. To arrive at a correct conclusion as to the meaning of this section, it is necessary, I believe, to gather the intention of Congress in adopting the statute, in revising it in 1923 and 1926, in broadening the powers of national banks to make loans upon the security of real property, in adopting the 1933 legislation providing for Federal Savings and Loan Associations, and in adopting certain other legislation to which reference will be made. And

in arriving at the intention of Congress, it is, of course, necessary to review the construction put upon the statute by the United States Supreme Court and by other courts to which the question has been presented.

I shall state my conclusions as briefly as the complexity of the question and a review of the legislative and judicial history of nearly one hundred years will permit.

Between the time in which Andrew Jackson served as President of the United States and the year 1863, the United States was without a national banking system. The conditions which existed in that year and which resulted in action by Congress were described upon the trial by Professor Woodworth, Professor of Finance at the School of Business Administration, in the University of Michigan, whose major field of specialization is money and banking. Mr. Woodworth said:

"I should say, sir, that the primary emphasis on monetary reform by the founders of the National Banking System grew out of the chaotic state of the currency during the period following the failure to renew the charter of the Second Bank of the United States in 1836 and extending to the establishment of the National System.

"Between one thousand and sixteen hundred state chartered banks issued notes of different designs and sizes, and worst of all these notes varied in value from worthless to part.

"Senator Sherman stated before the Senate that there were over seven thousand genuine kinds of notes in 1862 and some six thousand six hundred kinds of counterfeits. Mr. Sherman made that statement in a speech before the Senate February 10,

1863, quoted in the Congressional Globe, Part 1, 1862 to '63, page 84.

“Moreover, the notes of sound banks were discounted more and more heavily as they strayed farther from the point of redemption. Merchants had to subscribe to currently published bank note dictators listing values of notes and giving assistance in spotting counterfeits. Bank failures with their crippling losses to note holders and depositors were so numerous and widespread that public confidence in banks all but disappeared.

“For examples, there were 28 banks in Michigan in 1839, but by 1843 there were only 2, and in 1848 and 1849 there was only one bank; the number of banks in Ohio dropped from 37 in 1840 to 8 in 1844 and 1845; the 19 banks in Kentucky in 1851 were reduced to 4 in 1853; the number in Tennessee declined from 26 in 1838 to 1 in 1851-1857. These references are quoted from the Annual Report of the Secretary of the Treasury, 1876, pages 222 to 228.

“The lack of safety of banks was not only a drain on business and consumers, but was also a serious obstacle to Federal Government finance. Since the Treasury could not safely keep deposits in the banks, the Acts of 1840 and 1846 established an Independent Treasury System with subtreasuries in leading cities. Under these acts the Treasury could receive taxes and other receipts only in specie and Treasury notes, and public funds had to be kept in its own treasuries.

“This arrangement caused periodic disturbance in the money and capital markets, owing to the periodic withdrawals and outpayments of specie re-

serves. In addition, the Treasury could not rely on the banks to assist in its debt management operations—that is, borrowing, redeeming securities, refunding securities, and so on.

“The founders of the national banking system contemplated that national bank notes would become the only currency, aside from coins, as soon as the emergency issue of United States notes, popularly called the greenbacks, could be retired in the years following the Civil War.”

The proceedings of Congress having to do with the adoption of the provision which was to become Section 5219 are described in “State Taxation of Banks—Woosley” as follows:

“The statutory genesis of the state taxation of national banks is to be found in the National Bank Act of 1864. The original act of 1863 contained no provision authorizing the state taxation of national banks, but the debates on the revised measure were enlivened with this issue. Should the banks be subject only to federal taxation or to both federal and state taxation? If the latter, on what constitutional grounds might such taxation rest and by what methods and to what degrees should these banks be taxed by the states?

“In both houses of Congress there was a vigorous group which favored the exclusive taxation of national banks by the federal government, but in both bodies the advocates of joint state and federal taxation were victorious. After a number of proposals for state taxation were made in the House, that body passed a tax clause which permitted the states to tax the capital stock, other than that invested in federal bonds, to the same degree that the property

of other moneyed corporations was taxed, with the further proviso that the capital, circulation, dividends or business of national banks might be taxed at no higher rate than that imposed by the state on moneyed capital in the hands of individuals.

“When the measure reached the Senate, the constitutional phases of the question were elaborately discussed. Senator Sumner of Massachusetts urged that the supremacy of the federal government was of such a character as to free these banks as agencies of that government from the potentially destructive taxes of states, citing the dictum of Chief Justice Marshall in *McCulloch v. Maryland*. The advocates of state taxation, while admitting that the court had held that the United States Bank and its operations were not subject to state taxation, contended that such immunity did not apply to the shares. Mr. Fessenden of Maine urged that:

‘ . . . this opinion does not deprive the states of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State.’

“Senator Collamer drew a distinction between the institution and its shares which were the personal property of the shareholders and taxable as such at the situs of the shareholder. Senator Johnson of Maryland, who had heard the case argued before the court, interpreted the decision as declaring that the power of the State of Maryland to tax the shares of the United States Bank was an ori-

ginal power resident in the sovereignty of the state; that while a tax on the franchise or operations of the bank was held invalid by the court,

“... no judge though, and no member of the bar who argued the cause dreamed of denying that it would be in the power of the States to tax the property of their citizens invested in the stock of the Bank of the United States . . . and the Supreme Court closed their opinion, so as to exclude any conclusion which could be drawn as against the taxing power of the States on that point by saying that it is to be understood that Maryland has the right, and every State in which there may be a bank of the United States, either the mother bank or a branch, has the right to tax the real estate which the bank may hold within that State, and to tax the shares of her citizens in that institution.”

“Therefore Senator Johnson concluded that the federal government lacked the power to exempt from state taxation the shares of bank stock invested in government bonds.

“In the end this view prevailed and the state tax clause of the Senate bill provided for the taxation of the market value of bank shares subject to the restrictions that the rate imposed should not be higher than the rate on other moneyed capital in the hands of individual citizens nor higher than the rate on state bank shares. In the conference committee the Senate provision was adopted with slight changes and the measure became law on June 3, 1864.”

The Act, as adopted, restricted the rate imposed by states upon the shares of national banks to that (1) imposed on other moneyed capital, and (2) imposed on state banks.

In 1868 the second limitation to the rate on state banks was dropped from the Act so that the Act then read, so far as the limitation was concerned:

“Provided that nothing in this Act shall be construed to prevent all the shares in any of the said associations held by any person or body corporate from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under state authority * * * but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state.” (Woosley, 14).

This amendment was related primarily to the situs of taxation of bank shares and the elimination of the limitation to the rate imposed on state banks, was apparently without any particular significance.

There was no further substantial amendment to the Act until 1923, the only change in that period being that in phraseology incident to the general revision of the Federal Statutes in 1878.

Before 1923, at which time substantial amendments were made, many cases involving the meaning of Section 5219 were presented to the United States Supreme Court. If this opinion is to be limited to a reasonable length, reference to only a few of the cases can be made. The decision that has been most cited is *Mercantile National Bank v. City of New York*, 121 U.S. 138 (1887) and in the most recent decisions that case continues to be recognized as the leading case upon the interpretation of Section 5219.

In the opinion which was written about twenty years after the passage of the Act, the Court defines the object of the National Bank Act and the purpose of the section

fixing limitation on state taxation and deals at length with the question presented in this case—the power of the State to exempt in whole or in part certain moneyed capital without violating Section 5219.

The bill was filed to restrain the collection of taxes levied by the State of New York on the shareholders of a national bank and it was claimed that the State discriminated in its taxation against such shares in favor of insurance companies, trust companies, railroad companies, savings banks and other institutions. The Court first stated the purpose of the Act creating a National Banking System.

“The key to the proper interpretation of the Act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions in order to provide a uniform and secure currency for the people and to facilitate the operations of the Treasury of the United States.” (154).

The Court then considered the purpose of the limitation on the power of the State to tax:

“It was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the States from imposing such a burden as would prevent the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capi-

tal in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

"At this time, the Statute did not contain the language "coming into competition with the business of national banks" which was added in 1923. However, the Court in the *Mercantile* case, defined the term then used "moneyed capital in the hands of individual citizens" to mean only such moneyed capital as was in competition with the business of national banks, concluding its discussion on this point with these words:

"Whether property interests in railroads, in manufacturing enterprises, in mining investments, and others of that description, are taxed or exempt from taxation, in the contemplation of the law, would have no effect upon the success of national banks. There is no reason, therefore, to suppose that Congress intended, in respect to these matters, to interfere with the power and policy of the States.

The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. These are the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes it in the eye of this statute 'moneyed capital.' Corporations and individuals carrying on these operations do come into competition with the business of national banks, and capital in the hands of individuals thus employed is what is intended to be described by the act of Congress."

As stated, the Mercantile Bank case has been cited with approval and followed by the United States Supreme Court in a large number of cases including the most recent on the subject. Thus, in *First National Bank v. Anderson*, 269 U. S. 341 (1926), the Court said:

"* * * The earlier decisions have been reviewed from time to time in later cases, and all, taken collectively, may be summarized as showing, so far as is material here—

"1. The purpose of the restriction is to render it impossible for any state, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks, by favoring shareholders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking. Mer-

mercantile National Bank v. New York, 121 U.S. 138, 155; *Des Moines National Bank v. Fairweather*, *supra*, 116.

"2. The term 'other moneyed capital' in the restriction is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks. *Mercantile National Bank v. New York*, *supra*, 157; *Aberdeen Bank v. Chehalis County*, 166 U.S. 440, 461."

The Court in the *Mercantile* case further passed upon the question of the power of the State to exempt certain property—moneyed capital invested in savings banks—upon the ground of public policy and without violating Section 5219. And it is upon this part of the opinion and upon later cases involving savings banks that defendants rely in support of their contention that states may, without violating Section 5219, exempt or prefer moneyed capital invested in building and loan associations.

Because it is defendants' claim that building and loan associations are not different in their purpose, object or practical effect from mutual savings banks, it is appropriate at this point to briefly describe these latter institutions which were before the Court in the *Mercantile* and other cases to be cited. Professor Woodworth describes them in his testimony and they are to some extent pictured in the opinions in the Supreme Court to which reference will be made.

Mutual Savings Banks first appeared in this country in 1816. They had no capital stock, their funds came from savings deposits, they were operated by a board of

trustees chosen in various manners, their "capital" consisted of their surplus and reserves above liability to depositors. In general, their funds were invested in financing home ownership. All earnings except those retained for surplus reserve went back to the depositors.

The Mercantile Bank case was not the first case in which the power of the State to exempt property on the ground of public policy was considered. In *People v. Commissioners*, 4 Wall, 244 (1866), the Court said:

"It is known as sound policy that in every well regulated and enlightened state or government certain descriptions of property and also certain institutions—such as churches, hospitals, academies, cemeteries, and the like—are exempt from taxation; but these exemptions have never been regarded as disturbing the rates of taxation even where the fundamental law had ordered that it should be uniform."

In *Adams v. Nashville*, 95 U.S. 19 (1877), a suit by stockholders of a national bank to enjoin collection of a tax, the Court said:

"The act of Congress . . . was not intended to cut off the power to exempt particular kinds of property if the legislature chose to do so."

In *Hepburn v. School Directors*, 234 Wall. 480, (1874), the Court said:

"It could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt. Certainly, there was no presumption in favor of such an intention."

In the Mercantile Bank case, decided in 1887, the Court sustained, as not violating Section 5219, an exemption of savings banks. In doing so, the Court said:

“In the case of savings banks, we assume that neither the bank itself nor the individual depositor is taxed on account of the deposits. The language of the statute (§4, c.456, Laws of 1857) is as follows: ‘Deposits in any banks for savings, which are due to the depositors, . . . shall not be liable to taxation, other than the real estate and stocks which may be owned by such bank or company, and which are now liable to taxation under the laws of this State.’

“According to the stipulation in this case, the deposits in such banks amount of \$437,107,501, with an accumulated surplus of \$68,669,001. It cannot be denied that these deposits constitute moneyed capital in the hands of individuals within the terms of any definition which can be given to that phrase; but we are equally clear that they are not within the meaning of the act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must thereby also be exempted from taxation. No one can suppose for a moment that savings banks come into any possible competition with national banks of the United States. They are what their name indicates, banks of deposit for the accumulation of small savings belonging to the industrious and thrifty. To promote their growth and progress is the obvious interest and manifest policy of the state. Their multiplication cannot in any sense injuriously affect any legitimate enterprise in the community. We have already seen that by previous decisions of this court it has been declared that ‘it could not have been the intention of Congress to exempt bank

shares from taxation because some moneyed capital was exempt;’ *Hepburn v. School Directors*, 23 Wall. 480; and that ‘the act of Congress was not intended to curtail the state power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than like property similarly invested. It was not intended to cut off the power to exempt particular kinds of property, if the legislature chose to do so.’ *Adams v. Nashville*, 95 U.S. 19. The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares.”

It is to be noted that the Court gives two reasons for its holding. First, stating that savings banks do not come into competition with national banks and, secondly, stating that the statute was not intended to cut off the power to exempt particular kinds of property if the legislature chose to do so and if the exemption be founded on just reason and not operate as an unfriendly discrimination against investments in national bank shares.

The Court was to make clear which of these two reasons it considered the controlling one in later cases which came before it. A few months after the decision in the *Mercantile Bank* case, *Davenport Bank v. Davenport*, 123 U.S. 83 (1887) was decided. The decision in the case may be distinguished upon the ground that there was in fact no actual discrimination against national banks. The opinion of the Court is of importance because the Court which had decided the *Mercantile Bank* case, took occasion to state the reason for its decision in that case; the Court said:

"The whole subject has been recently considered by this court in the case of *Mercantile Bank v. New York*, 121 U.S. 138. In that opinion it was held that, while the deposits in the savings banks of New York constituted moneyed capital in the hands of individuals, yet it was clear that they were not within the meaning of the act of Congress in such a sense as to require that because they were exempted from taxation the shares of stock in national banks must also be exempted. The reason given for this is that the institutions generally established under that name are intended for the deposits of the small savings and accumulations of the industrious and thrifty; that to promote their growth and progress is the obvious interest and manifest policy of the State; and, as was said in *Hepburn v. School Directors*, 23 Wall. 480, it could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt."

Less than a year later, the *Bank of Redemption v. Boston*, 125 U.S. 60 (1888) was decided and the opinion was written by Mr. Justice Matthews who had written the opinion in the *Mercantile Bank* case. Plaintiff bank alleged that the State of Massachusetts collected from national banks a tax of \$1,564,995.00 upon bank shares of 113 million dollars, while upon 163 million dollars of savings bank deposits it collected only \$815,930.00.

Plaintiff sought to distinguish the *Mercantile* case by the allegation that in Massachusetts, savings banks were permitted to transact a banking business in the way of loans upon personal securities "which assimilates them more closely to national banks and takes away the reason for the application of the rule to them which was applied to the case of the savings banks of New York."

The Court held that section 5219 was not violated, saying: "The question of exemption from taxation of deposits in savings banks as affecting the rule for state taxation of national bank shares was very diligently considered by this Court in the case of *Mercantile Bank v. New York*, 121 U.S. 138, 160; and the conclusion reached in that case was reaffirmed in the case of *Davenport Bank v. Davenport Board of Equalization*, 123 U.S. 83."

Answering the contention as to actual competition and the difference between the facts in New York and Massachusetts, the Court said:

"But the difference mentioned, if it exists at all, is immaterial; the main purpose and chief object of savings banks, as organized under the laws of Massachusetts, are the same as those in New York, as considered in the case of the *Mercantile Bank*. They are substantially institutions, under public management, in pursuance of a great and beneficial public policy, organized for the purpose of investing the savings of small depositors, and not as banking institutions in the commercial sense of that phrase. We adhere to the rule as declared in the cases heretofore decided, which forecloses further discussion as to the present point in this case."

I have not been cited, nor have I been able to find any subsequent decision of the United States Supreme Court which squarely involved discrimination in favor of savings banks. In two later decisions, however, the Court did recognize the validity of the rule of exemption stated in the cases which have been cited.

In *Aberdeen Bank v. Chehalis County*, 166 U.S. 440 (1896), the Court, referring to the *Mercantile Bank* case, said:

"As to savings banks it was held that, though it could not be denied that their deposits constituted moneyed capital in the hands of individuals, yet it was clear that they were not within the meaning of the act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must also be exempted; that it was part of the policy of the State to encourage the accumulation of small savings belonging to the industrious and thrifty, and it was within the reasonable exercise of the power of the State to exempt particular kinds of property, and the conclusion of the court, in respect to savings banks, was thus expressed." (Quoting from the *Mercantile Bank case*).

And in *National Bank v. Chapman*, 173 U.S. 305 (1898), the Court, after referring to the *Mercantile Bank* and other cases, said:

"... and that exemptions from taxation, however large, such as deposits in savings banks or monies belonging to charitable institutions which are exempted for reason of public policy and not as an unfriendly discrimination as against investments in national bank shares, cannot be regarded as forbidden by the Federal Statute (214)."

It is the claim of the defendants that building and loan associations are in the same class of institutions as savings banks. They are described at length in the testimony of Professor Woodworth. Because they will be described in the statutes and decisions to which reference will be made, I shall not summarize his testimony except to state his conclusions:

"Q. Now, referring to 1952, were savings and loan associations similar to national banking associations?

"A. I should say they were not.

"Q. Were they similar to any other financial institution?

"A. Yes, I should say savings and loan associations were quite similar to mutual savings banks."

The power of the State to exempt or favor moneyed capital invested in the shares of building and loan associations had not been decided by the United States Supreme Court prior to the 1923 amendments to the statutes. It had, however, met judicial consideration in *Mercantile Bank of Cleveland v. Hubbard*, 98 Fed. 465 (1899). The opinion was written by Circuit Judge Taft who said; after citing *Bank v. Chapman*, 173 U. S. 205;

"I do not find that there was anything more of substance before the master than there was before the supreme court upon this issue of fact. There is proof of the capital in savings banks, and also of the capital invested in building and loan associations; but, under the decision of *Mercantile Bank v. City of New York*, 121 U. S. 138, 7 Sup. Ct. 836, 30 L. Ed. 895, capital invested in savings banks cannot be regarded as moneyed capital, within the meaning of section 5219, exemption of which from taxation can constitute a discrimination within the inhibition of that section. It seems to me that building associations are certainly not to be differentiated in their purpose or object, or practical effect, from savings banks, and that the capital invested in them, though subject to a somewhat different rule of taxation, cannot be regarded as moneyed capital in competition with the moneyed capital in national banks,

any more than is capital invested in savings banks. The chief object of building associations is to encourage the building of small houses by poor people, and the savings from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house. The mere fact that every shareholder in a building association need not be a borrower cannot, I think, change the effect of the general purpose of the building association law. The general result of the evidence is no more satisfactory as showing what amount of discrimination, if any, there is by reason of this definition of 'credits' in the Ohio statute of taxation, than it was in the case of *Bank v. Chapman*. For this reason I must conclude, as the master did, that the averments of the bill as to the discrimination, arising from the operation of this definition of 'credits,' against money capital, is not such as to justify any action by the court in the complainant's favor."

This decision was before the Circuit Court of Appeals, 195 Fed. 809, and the United States Supreme Court in 186 U. S. 458 (under the case of *Lander v. New York Bank*), but in neither appellate court was the question of exemption of building an loan shares presented or decided.

This was the state of the case law with respect to the power of the state to exempt such associations as mutual savings banks and building and loan associations upon the ground of public policy when Congress amended section 5219 in 1923. I cannot escape the conclusion that at that time, it was established law that the state had the power to exempt on the grounds of public policy institutions of the general character of mutual savings

banks without violating section 5219. The Court had so announced the law in the five cases which have been discussed. In no case had it overruled or disapproved the principles of those cases. And Judge Taft in the Hubbard case had applied the rule to building and loan associations and while this is not conclusive, counsel who took the case to the Court of Appeals and to the Supreme Court does not have appeared to have challenged his ruling as to building and loan associations in either of those courts.

In arriving at the intention of Congress in its adoption of the 1923 amendment to section 5219, attention must be given to the events which preceded and apparently provided the reason for such legislation.

In 1921 the Supreme Court decided *Merchants National Bank v. Richmond*, 256 U. S. 635, and held that the words "moneyed capital" included "not only monies invested in private banking, so-called, but investments of individuals in securities that represent money, the interest, and other evidences of indebtedness that normally enter into the business of banking."

The facts were that the State and city had taxed bank shares at \$1.75 per hundred dollars while bonds, notes and other evidence of indebtedness in the hands of individuals were taxed at the combined rate of ninety-five cents per hundred dollars. The Court held that section 5219 was violated.

The case did not involve building and loan shares or savings banks. The court in its opinion quoted with approval the Mercantile definition of moneyed capital, but did not discuss exemptions of such institutions on the ground of public policy.

The decision is said by Woosley (Page 53) to have imperiled share taxes in eight classified property tax states and in twelve other states which exempted moneyed capital from the property tax and substituted therefor an income tax. Large numbers of suits were commenced by national banks and in some states the banks refused to pay taxes assessed against them.

Alarmed state officials inaugurated a movement to amend section 5219 and a bill was prepared and introduced in the House to permit states to tax shares of national banks or the income therefrom subject only to the restriction that the burden imposed should not be heavier than that levied upon capital invested in state banks or upon the income therefrom (Woosley, 53, 54). The ensuing proceedings are portrayed by the same author and may be read with interest.

It is sufficient here to say that it does not appear that at any time in any of the several proposals considered in the two Houses of Congress that there was an effort made to legislate against the power of the states to exempt savings banks, building and loan associations or other like institutions on the ground of public policy.

The bill that finally emerged as the law provided for three alternative methods of taxation of interest in national banks:

- (1) a tax upon shares;
- (2) net income tax on the banks;
- (3) tax on net income from dividends to owners of shares.

With respect to the tax upon bank shares, the language of section 5219 was amended to read that the tax shall not be at a greater rate "than is assessed upon

other moneyed capital in the hands of individual citizens of such state *coming into competition with the business of national banks.*" (Emphasis added.)

Woosley, citing the Congressional record, states upon consideration of the amended House Bill which was to eventually pass the House and Senate and become the law, Representative Wingo declared:

"That the bill offered 'a tried simple rule that is well settled by a long line of judicial decisions with such additions to it as will clearly and more equivocably overrule the Richmond decision.'"

While, as will be seen, Mr. Wingo proved a poor prophet as to the future effect of ~~of~~ legislation upon the Richmond decision, his statement is of interest upon the question of whether Congress had any intention of changing the rule of the Mercantile and other savings banks cases upon the power of the State to exempt such property on the ground of public policy.

The effect of the 1923 amendment came before the Supreme Court in *First National Bank v. Anderson*, 269 U. S. 341, decided in 1926. The Court there approved its holding in the Richmond case and said:

"The defendants say that this reenactment was intended as legislative interpretation of the prior restriction and that the proceedings resulting in its adoption so show. But, assuming that this is true, the situation is not changed; for the reenactment did no more than to put into express words that which according to repeated decisions of this Court was implied before."

And the court proceeded to quote from the Mercantile Bank opinion in its definition of moneyed capital.

In 1926 the statute was again amended by adding the fourth alternative method of taxing national banks—that of imposing a franchise or excise tax and by permitting a tax on dividend income to be combined with either corporate or net income or franchise tax. This apparently was the result of an agreement between representatives of the banks and of the states and has no significance here (Woosley, page 63).

If it be accepted that by virtue of the decisions in the savings bank cases it had become established law that the states had power to exempt savings banks and like institutions upon the ground of public policy, it is difficult to find in the history and language of the 1923 and 1926 amendment to section 5219 any evidence on the part of Congress to take from the states that power.

Certainly, the power of the states to grant exemptions on the ground of public policy was an important power. It had been recognized throughout the first fifty years of the life section 5219 and to terminate it would affect the validity of many state taxation systems. I am not persuaded that the intent to do so should be inferred from an amendment which does not mention the power and the passage of which was brought about by certain considerations having nothing to do with the existence of that power.

It is the further contention of the plaintiff that by reason of certain amendments to the Federal Reserve Act the power of national banks to loan money on the security of real property was greatly broadened, that the increased exercise of such power by the banks has resulted in substantial actual competition between national banks and other moneyed capital in the field of loans on residential property and that the Court recognized such competition in its decision in *First National Bank v.*

Hartford, supra, and in *Minnesota v. First National Bank*, 273 U. S. 561.

The plaintiff has in its brief reviewed the legislation having to do with national bank loans on the security of real property as follows:

"An historical review of Section 24, Federal Reserve Act (12 U. S. C. 371), as amended (which prescribes the authority of national banks to make loans secured by real estate), reveals that prior to 1916, national banks were not authorized to loan money on the security of real estate, with the exception of certain farm land. By Act of September 7, 1916, the first grant of authority by Congress to loan on residential real estate was made to national banks. This enabled national banks to loan money on the security of improved real estate to the extent of 50% of actual value for a term of no longer than one year. With the exception of the Act of February 25, 1927, which extended the term of said mortgages to no longer than five years, no material change was made in the national banks' authority to loan on the security of residential mortgages until 1934.

"In 1934 (Act of June 27, 1934), national banks were permitted to make mortgage loans under Title II, National Housing Act (12 U. S. C. 1701 et seq.), commonly described as F. H. A. mortgages. By Act of August 23, 1935, amending Sec. 24 of the Federal Reserve Act, national banks were authorized to make residential mortgage loans in the amount of 60% of the appraised value of the property for a term of ten years if 40% of the mortgage principal were amortized within ten years. By Comptroller General's decision of 1944, national

banks became participants in the V. A. (or G.I.) home loan program.

“Accordingly, in 1952, national banks were authorized to make F. H. A. mortgage loans, V. A. mortgage loans, and liberal conventional mortgage loans.”

First National Bank v. Hartford was decided in March, 1927. The Supreme Court in a suit by a national bank to recover the amount of tax assessed and collected upon its shares of stock reversed a judgment for the defendant and held that the Wisconsin statute was invalid as being in violation of section 5219. The Court summarized the evidence as to the alleged competing moneyed capital in the hands of real estate firms which loaned money, and in the hands of individuals, co-partnerships and corporations engaged in the business of acquiring and selling notes, bonds, mortgages and securities. The Court held that there was competition, in fact, with the business of national banks and stated its reasons therefor in the language previously quoted in this opinion. In the decision of the Wisconsin Supreme Court in the same case, (203 N. W. 721, 733-4), the matter of tax preference to building and loan associations was discussed and the Wisconsin Court insofar as such institutions was concerned gave consideration to the savings bank cases and to the Hubbard case, but in the United States Supreme Court opinion, the Court, in its description of the competing capital involved, did not base its decision on any claimed competition between banks and such associations.

The Supreme Court did in the Hartford case cite with approval the Mercantile Bank case on three different occasions, but it did not consider or decide the matter of exemption by the states on the ground of public policy.

of savings banks, building and loan associations or other like institutions.

Nor did the Minnesota case, decided on the same day as the Hartford case, mention building and loan associations and the opinion does not discuss exemptions on the ground of public policy.

If the savings bank cases had been grounded on the lack of actual competition between those institutions and national banks, the argument of counsel that those decisions were no longer applicable because of the broadened powers of national banks would be persuasive, in those cases in which the banks had actually exercised those broadened powers and proof of actual competition within the definition of that term in the Hartford case actually existed.

But if the real basis of the savings banks cases was the power of the states to exempt on the ground of public policy without regard to the existence or actual competition, then I do not find in the legislation broadening the powers of national banks or in the opinion of the Supreme Court in the Hartford and Minnesota cases any evidence of an intention to take from the states the power to grant such exemptions.

And it is a little difficult to believe that the Court in the Hartford case, relying so heavily on the principles of the Mercantile Bank case, intended to overrule that part of that decision relating to the power of the state to exempt on the ground of public policy without once mentioning the subject.

With this background of the history of the legislation and of its judicial interpretation, we now reach the precise question presented in this case—did the State of Michigan in 1952 have the power to exempt or prefer

savings/building and loan associations without violating section 5219?

The 1899 decision of Judge Taft in the Hubbard case has already been discussed. The question was next considered by a Federal Court in 1932 in *Hoenig v. Huntington National Bank*, 59 Fed. 2d 479 (C. C. A.—6 certiorari denied October 17, 1932, 287 U. S. 648).

In this suit three national banks contended that section 5219 had been violated because of the preferential treatment given by the State of Ohio to building and loan associations.

The Court of Appeals reversed the District Court which had held that actual competition in fact existed between the national banks and the savings and loan institution and that section 5219 was violated. 45 Fed. 2nd, 213.

The Court of Appeals in both the majority and minority opinions cited and recognized the principles of the Anderson and Hartford cases. But the majority of the Court held that the case was governed by the principle of the savings banks cases. It quoted from the opinion of Judge Taft in the Hubbard case that building and loan associations were not to be differentiated in their purpose or object or practical effect from savings banks.

The Court then met the argument that is made in the instant case that there is a difference between the building and loan associations of earlier days and those of today. The Court said:

“It is insisted, however, that the present day building association is a very different type of institution from the ‘small, neighborhood, mutual associations of Judge Taft’s time,’ and emphasis is laid upon the construction of offices in similitude to those of banks, the competition for deposits, the

payment of deposits on demand, and the making of loans upon collateral security. We do not think that the general nature of the business of building associations has so far changed as to make the law established by the above-cited cases inapplicable."

And then the Court considered the claim also made in this case as to the change in powers of national banks and said:

"It is quite true that national banks, subject to certain restrictions, are now permitted to loan money upon the security of real estate mortgages, and that the plaintiffs below had taken advantage of this privilege. It is also true that building associations have invested some of their funds in Liberty bonds, and, to a very limited extent, may have made a few investments of idle capital in collateral loans or so-called 'straight' mortgages. But we cannot concede that even as to these investments the building associations are in substantial competition with national banks, or that, as claimed by plaintiffs below, the mere facts that money is loaned by building associations upon promissory notes, at interest and to be repaid in money, and that national banks take the ownership of real estate into consideration in passing upon the credit standing of borrowers, necessarily bring the two classes of institutions into competition. In the broad economic sense this may be so, but it was equally so when *People of State of New York v. Commissioners, Mercantile Nat. Bank v. New York, First National Bank of Wellington v. Chapman, and Mercantile National Bank v. Hubbard* (*Lander v. Mercantile Nat. Bank*) were decided. In those cases the fundamental and substantial differences between commercial institutions, such as

national banks, and institutions of the insurance company, savings bank, and building association types, were the real bases of the finding of want of competition; and our decision of the present issue is founded upon a recognition of these same differences."

It is the contention of plaintiff that the Hoenig case may be distinguished on the facts as to competition, but if the portion of the opinion last quoted actually reflects the thinking of the Court of Appeals, additional proof of competition would not have affected the result. This matter of discrimination in favor of building and loan associations has also met consideration by the state courts and they have uniformly held on the strength of the savings bank cases that the state has the power to exempt or prefer building and loan associations. In addition to the state court decisions, in those cases which were appealed to the United States Supreme Court, there are the following: *People v. Goldfogel*, 205 N. Y. S. 870; 211 N. Y. S. 85 (1924); *Merchants National Bank v. Dawson County*, 19 Pacific 2d 892 (1933); *Consolidated National Bank v. Prieme County*, 42 Pacific 291 (1897).

It is the contention of the plaintiff that competition with building and loan associations was actually involved in three decisions of the Supreme Court, *First National Bank v. Hartford*, *supra*; *Commercial National Bank v. Custer*, 275 U. S. 502; *First National Bank of Shreveport v. Louisiana State Tax Commission*, 289 U. S. 60.

The Hartford case has already been discussed and as pointed out, while the state court specifically dealt with the effect of competition with building and loan associations, the Supreme Court based its decision on the basis

of competition with real estate firms and individuals and did not mention the building and loan associations and did not discuss much less overrule, the savings bank cases.

Commercial National Bank v. Custer is a like case. The Supreme Court decision is a memorandum opinion only. The opinion of the State Court (245 Pacific 259) discloses that the competition claimed represented money invested in notes in the hands of individuals, in mortgages, in real estate, and investment companies, and in building and loan associations.

The Supreme Court opinion reads:

"Reversed on authority of First National Bank of Hartford v. Hartford, 273 U. S. 548, 559, 560; Minnesota v. National Bank of St. Paul, 273 U. S. 561, 567, 568."

Inasmuch as neither the Hartford case nor the Minnesota case was decided by the Supreme Court on the basis of competition with building and loan associations and in neither case was there any discussion of the savings bank cases or of the power of the State to exempt on the ground of public policy, I cannot find in the memorandum opinion any intention to overrule those cases or to hold the State without that power. "For a discussion of the effect of the Custer case, see *Merchants National Bank v. Dawson County*, 19 Pacific 2d 893, 896 (Montana, 1933).

The third case relied upon by plaintiff is the *First National Bank of Shreveport v. The Louisiana Tax Commission*, 289 U. S. 60 (1933). The Court there affirmed the decision of the Louisiana Supreme Court in 143 Southern 23.

The State Court had held that the State of Louisiana had not violated either the 14th Amendment of section 5219 by its preferential treatment of loan companies, finance and securities companies, pawnbrokers, homestead and building associations, Federal joint stock land banks, life insurance companies, real estate, mortgage and investment companies, and investment brokers. The Louisiana Court said, insofar as building and loan associations were concerned, and quoting from the savings bank cases, that:

“even if the tax system complained of by plaintiffs did operate in favor of homestead and building associations (the Louisiana name for building and loan associations), that would not be a cause for complaint.”

The United States Supreme Court, affirming the decision of the Louisiana Court, said, in answer to the 14th amendment argument:

“If we may take judicial notice of the functions of these alleged competitors of the plaintiffs, there appears ample basis for the classification, among other things, in this: There is a fundamental difference between banks, which make loans mainly from money of depositors, and the other financial institutions, which make loans mainly from the money supplied otherwise than by deposits.”

And in disposing of the argument based on section 5219, the Court did not discuss separately the several alleged competitors, but answered the argument of the national bank in the following language:

“The item most strenuously urged upon us is that the plaintiffs were engaged in lending money on mortgages of real estate, a line of business in which

many mortgage companies, insurance companies, building and loan associations, and individuals were also engaged; and that the latter escaped taxation thereon. The record discloses that each of the banks held real estate mortgages in a substantial amount. But the fact that the banks held mortgages does not prove that they lent money on the security of those mortgages. These may have been taken to secure pre-existing liabilities or as additional security for personal loans. The Supreme Court found: "The testimony leaves no doubt that there was no competition with the national banks on the part of any concern lending money on mortgage of real estate, because national banks will never handle such loans." The record contains evidence ample to support that finding."

Plaintiff urges that the statement as to fundamental difference between these alleged competitors related solely to the 14th amendment argument and furnishes no justification for a difference in tax treatment insofar as section 5219 is concerned.

And, because the Court in discussing the effect of section 5219, dealt with all the alleged competitors together, plaintiff draws the inference that if as a matter of fact actual competition had been found, the Court would have held that section had been violated because of the preferred treatment of the homestead associations.

I am unable to find the conclusion justified. Again, to agree with plaintiff, the Court must find that the Supreme Court intended to overrule the savings bank cases and to disapprove the decision of Judge Taft in the Hubbard case and that of the circuit court of appeals in the Hoenig case (in which it had but a few months

earlier denied certiorari), without once mentioning those decisions nor their basis, that is, the power of the state to exempt on the ground of public policy.

I, therefore, find nothing in the decisions of the Hartford, Custer and Shreveport cases which justifies the conclusion that the Supreme Court has departed from the established law announced in the savings bank cases and applied in the Hubbard and Hoenig cases. The most that can be said of these cases is that perhaps the Court intentionally avoided coming to grips with this question, reserving its decision for a future day. Such a speculation scarcely justifies a trial judge in prophesying that the Court will eventually overrule its earlier decisions.

That the Supreme Court had not at that time lost sight of the principles involved in the savings bank cases is made clear by its opinion two years later in *Hopkins Savings Association v. Cleary*, 296 U. S. 315 (1935). Justice Cardozo in the case involving the construction and validity of one provision of the Home Owners Loan Act of 1933, said:

“A corporation is a juristic person organized by government to accomplish certain ends, which may be public or quasi-public, though for other purposes of classification the corporation is described as private. *Dartmouth College v. Woodward*, 4 Wheat. 518, 668-672. Cf. the statutes and decisions collected by Brandeis, J. in *Liggett Co. v. Lee*, 288 U. S. 517; 548, et seq. This is true of building and loan associations in Wisconsin and in other states. They have been given corporate capacity in the belief that their creation will advance the common weal. The state, which brings them into being, has an interest in preserving their existence, for only thus can they attain the ends of their creation. They

are more than business corporations. They have been organized and nurtured as quasi public instruments. *Louisville Gas & Electric Co. v. Coleman*, *supra*. They may not divest themselves of a franchise when once it is accepted if the local statutes or decisions command them to retain it. See opinion of the court below, and cf. *Thomas v. Railroad Co.*, 101 U. S. 71; *Central Transportation Co. v. Pullman's Car Co.*, 139 U. S. 24. How they shall be formed, how maintained and supervised, and how and when dissolved, are matters of governmental policy, which it would be an intrusion for another government to regulate by statute or decision, except when reasonably necessary for the fair and effective exercise of some other and cognate power explicitly conferred."

And if the Court by its broad language in the *Hartford* case and by its emphasis on competition in the *Shreveport* case indicated any doubt as to the power of the State to exempt building and loan associations, the congressional act later in 1933 appears sufficient reason for holding that Congress has removed that doubt. I refer to the Home Owners Loan Act of 1933 (12 U. S. C. A. 1461-1468).

By that act, Congress for the first time authorized the organization of Federal Savings and Loan Associations. In doing so, Congress defined its purposes in these words:

"In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the board is authorized under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation and regula-

tion of associations to be known as 'Federal Savings and Loan Associations' and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States." Section 1464(a).

In Subdivision 9, the act authorized the secretary of the treasury to subscribe for preferred stock in such associations and by subdivision J to invest in full pay income shares of the associations.

Section 1465 provides:

"To enable the board to incorporate local thrift and local home financing and to promote, organize and develop the associations herein provided for or similar associations organized under state laws, there is appropriated" certain sums of money.

And in section 1464H, Congress dealt specifically with the taxation of such associations and provided:

"Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority

shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

While the United States Supreme Court has not, so far as I have discovered, determined the general power of Congress to adopt this act (see *Hopkins v. Savings and Loan Association*, 296 U. S. 315; *Kay v. U. S.*, 303 U. S. 1), the Circuit Court of Appeals (New York) has held that the act is valid as within the constitutional power of Congress to tax, borrow and make appropriations for the general welfare. *U. S. v. Kay*, 89 Fed. 2d 219 (C. C. A.).

I find this 1933 action on the part of Congress very significant.

—In providing for the creation of Federal Savings and Loan Associations, Congress acted under its welfare powers, while in its earlier action providing for national banks, it had acted under its monetary powers.

—In the 1933 Statute, Congress determined that savings and loan associations were "local mutual thrift institutions in which people may invest their funds" and (which) "provided for the financing of homes."

Congress determined that the interest of the people of the United States would be served by the organization and operation of such institutions and that the appropriation of public funds for that purpose was justified.

—Congress determined that the character of savings and loan institutions was so far different from the other financial institutions, that different and preferred tax treatment for the former was justified.

In providing for the taxation of these institutions by the State, Congress could have made the measuring stick, the limit on the rate of taxation, that imposed on national banks, also a creation of Congress. It could have made such measuring stick the rate imposed by the states on state banks and it could have made it that imposed on other moneyed capital. It did none of these things. Instead, it provided that the tax imposed should not be greater than that imposed on "other similar local mutual or cooperative thrift and home financing institutions."

Congress thus identified the institutions that it considered to be in competition with Federal Savings and Loan Associations. Obviously, Congress did not consider savings and loan associations to be in competition with banks, either state or national.

This action on the part of Congress appears to be a clear recognition of the principles which underlie the decisions in the savings bank cases, the Hubbard case, and the Hoenig case. It forcefully negatives the claim that Congress, by amending section 5219 in 1923, and by broadening the powers of national banks, intended to change the law with respect to the preferred treatment by the state of thrift institutions.

Plaintiff further alleges that there has been such a substantial change in the purpose and character of building and loan associations since the savings bank cases and the Hubbard case that those authorities are no longer applicable.

This same contention was answered by the Circuit Court of Appeals in the Hoenig case. It is answered by the testimony of Professor Woodworth in this case and Congress by its definition of the purpose of the 1933

act effectively settles the question of the character and purpose of these institutions.

The Michigan Act has not been substantially changed since its adoption in 1887. It continues to provide that building and loan associations shall not do a banking business and shall not accept or advertise for deposits. It has been amended to make it compatible with the Federal 1933 Statute. Its purposes are to continue to be those stated in the Federal Act, namely:

“To provide local mutual thrift institutions in which people may invest their funds” and (which) “provide for the financing of homes.”

The proofs do not support a finding that there has been any material difference between the Michigan institutions of the present day and those organized under the Federal Statute.

There remains one further question on this branch of the case. The rule, as stated in the savings bank cases, was that the power of Congress to exempt or prefer those institutions on the ground of public policy was subject to the limitation that the exemptions “should be founded upon just reason and not operate as an unfriendly discrimination against investments in national bank shares.”

Both the reasoning of the courts in the savings bank cases, the Hubbard case and the Hoenig case, and the provisions of the 1933 Act relating to Federal Savings and Loan institutions, and those of the Revenue Code giving preferred treatment to such associations in their income taxes (26 U. S. C. A. 116C, 591) furnish convincing proof that Congress had determined and the others recognized just reason for the exemption of preferred tax treatment of these associations.

Upon the trial, plaintiff contended that the Michigan Intangible Tax Act, as amended, imposed a tax on the shares of national banks which was substantially greater than that imposed on building and loan shares.

Defendant answered that because of the difference in character of the two institutions, the actual burden of the tax imposed on building and loan associations and its stockholders was from an economic standpoint substantially equal to the burden imposed on national banks and their stockholders. Citing *Amoskeag Savings Bank v. Purdy*, 231 U. S. 373, and *Tradesman Bank v. Tax Commission*, 309 U. S. 560.

In the *Amoskeag* case, the Court said:

"The State is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unfriendly discrimination is inflicted upon them. There are other considerations to be weighed in determining the actual burden of the tax, one of which is the mode of valuing bank shares—by adopting 'book values'—which may be more or less favorable than the method adopted in valuing other kinds of personal property."

In the *Tradesman Bank* case, the Court said:

"A consideration of the course of judicial decision on R. S. 5219 and its predecessors can leave no doubt that the various restrictions it places on the permitted methods of taxation are designed to prohibit only those systems of state taxation which discriminate in practical operation against national banking associations or their shareholders as a class. Compare *First National Bank v. Hartford*, 273 U. S. 548; *Amoskeag Savings Bank v. Purdy*, 231 U. S.

373; *Covington v. First National Bank*, 198 U. S. 100; *Lionberger & Rouse*, 9 Wall. 468. Thus it is not a valid objection to a tax on national bank shares that other moneyed capital in the state or shares of state banks are taxed at a different rate or assessed by a different method unless it appears that the difference in treatment results in fact in a discrimination unfavorable to the holders of the shares of national banks. *Amoskeag Savings Bank v. Purdy*, 231 U. S. 373; *Covington v. First National Bank*, 198 U. S. 100."

Defendant further quotes from an article in 31 *Harvard Law Review*, 324, 367, in which the author states:

"* * * So long as substantially equivalent burdens are imposed on all other economic values by taxation of tangible property and of the capital and franchises of corporations, it would be absurd to insist that the exemption of one or more of the legal forms of property in which those values may be represented, results in taxing shares in national banks at a greater rate than that imposed on other moneyed capital. The rule of the *Mercantile Bank Case* practically comes down to a disregard of formal legal discrimination where there is in fact no substantial economic discrimination."

Reference is also made to *Woolsey*, page 24:

"* * * Since the restriction in §5219 does not require that the state shall apply the same mode of taxation to national bank shares that it applies to other property provided no injustice, inequality, or unfriendly discrimination arises therefrom, the rate of taxation must refer to the actual incidence and

practical burden of the tax upon the taxpayer.' * * *
(Citing *Covington v. First National Bank of Covington*, and *Amoskeag Savings Bank v. Purdy*.)

Plaintiff answers that *Minnesota v. First National Bank*, 273 U. S. 561, effectively disposes of this issue in favor of the plaintiff.

Whether or not the substantial equality from an economic standpoint of the burden imposed is the proper test under section 5219 and the decision in the *Minnesota* case is unnecessary to the decision of this case in view of the conclusion to which I have come. However, the fact that the economic burdens imposed by the *Michigan Statute* are not at great variance is of force in determining whether the legislature in its treatment of taxation of savings/building and loan associations acted upon the grounds of sound public policy or for the purpose of an unfriendly discrimination against national banks.

I find nothing in the proofs or the law to indicate such a hostile intention on the part of the Michigan Legislature. Rather, it appears that such preference as may exist resulting largely from the difference in the character of the two institutions, was in pursuance of an established public policy long existing in the states and long recognized by the courts and by Congress as being justified by the purpose and object of savings/building and loan associations.

Accordingly, I conclude:

1. Since 1887, the Courts have consistently held in every case squarely involving the question that the state may exempt or prefer on the ground of public policy mutual savings bank and other like institutions, pro-

vided such exemption is based on just reason and is not made for the hostile purpose of an unfriendly discrimination with national banks.

2. That the power of the State to make such exemptions on the ground of public policy is an important one, grounded in history and on precedent. The intention of Congress to destroy it should not be lightly inferred.

3. The 1923 and 1926 amendments to section 5219 and the amendments to the Federal Reserve Act broadening the powers of the national banks were not intended to take from the State such long established and well recognized power.

4. That from their beginnings and continuously throughout their history, building and loan associations have been similar in character and purpose to and of the same general class of mutual thrift and home financing institutions as mutual savings banks.

5. That Congress in the Home Owners Loan Act of 1933 definitely recognized and approved such classification of savings/building and loan associations and the propriety of different tax treatments of banks and such associations and in effect, said that money invested in such associations is not moneyed capital in competition with the business of national banks.

6. That Michigan's tax treatment of savings/building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks.

Plaintiff further contends that the Michigan Intangible Tax Act, as amended (M. S. A. 7.556(2a)) imposes a tax "on the privilege of ownership" of shares in national banks, and that section 5219 permits only a tax upon

"the shares of national banks" and does not permit a tax upon the "privilege of ownership" of such shares.

It must be agreed that if there is a legal difference between a tax "upon shares," a tax upon "the ownership of shares" and a tax upon the "privilege of ownership" of shares, the Michigan Statute is not too clear as to the type of tax here intended.

The Statute provides that:

"There is hereby levied upon each * * * owner of shares of stock of national banking associations * * * and there shall be collected from each owner an annual specific tax on the *privilege of ownership* of each share of such stock * * *. The tax on such shares of stock levied under this section shall be the only tax levied with respect to shares of such associations, banks or trust companies."

In *Goodenough v. Department of Revenue*, 328 Mich. 56, the Court, in deciding the nature of the tax imposed by section 2 on intangible personal property generally, had before it substantially the same language, that is:

"There shall be collected from such owner an annual specific tax on the privilege of ownership of each item of such property owned by him."

The Court quoted with approval from *Dawson v. Kentucky Distilleries*, 255 U. S. 288, in which the Court said:

"The name by which the tax is described in the statute is, of course, immaterial. Its character must be determined by its incidence."

The opinion in the Dawson case was written by Justice Brandeis and in it, he further said:

"To levy a tax by reason of ownership of property is to tax the property." Citing among other cases *Thompson v. Kreutzer*, 112 Miss. 165.

In the latter case, the Mississippi Court said:

"Ownership is not a privilege conferred by government, but is one of the rights which governments were organized to protect. Discarding, then, the word 'privilege' and substituting therefore the proper word 'right,' the distinction here sought to be made by the attorney-general is one without a difference. In a strict legal sense, 'property' (from the Latin word *proprius*, meaning belonging to one; one's own) is synonymous with the 'right of ownership' and means one's exclusive right of possessing, enjoying, and disposing of a thing. Burdick on Real Property, 2; 2 Blackstone, 2; 6 Words & Phrases (First Series) 5697 et seq.; 23 Am. & Eng. Enc. Law (2nd Ed.), 259; 32 Cyc. 647.

"Property may also be, and in the section of the Constitution here under consideration is, used to signify 'things owned.' In order that a thing may be owned, some one must, of course, have the right to the ownership thereof. A tax on a thing is a tax on all its essential attributes; and a tax on an essential attribute of a thing is a tax on the thing itself. So that, a tax on a thing owned is necessarily a tax on the right of ownership thereof; and a tax on the right of ownership of a thing is necessarily a tax on the thing itself. No definition of property can be framed which does not include the right of per-

ship. Consequently, no tax can be imposed on the right of ownership which is not also a tax on property."

The proofs and the arguments in this case very forcefully demonstrate that the impact of the Michigan tax is upon the shares of plaintiff bank. Judging the tax by its incidence, I find no basis for holding that it is not a tax upon "the shares of national banking associations" within the meaning of that term as used in section 5219.

It is my opinion that the Michigan Intangible Tax Act, as amended, does not violate the Revised Statutes, Section 5219. A judgment may be entered for the defendants.

As I read section 16 of the Court of Claims Act (27-3548(16)), the matter of costs is one of discretion.

The question here is a public one and one in which the State of Michigan and its various financial institutions are much interested. I do not feel that costs should be awarded against the plaintiff and the judgment shall, therefore, read "without costs."

Fred N. Searl,
Circuit Judge.

Dated this ... day of January, 1959,
at Grand Rapids, Michigan.

JUDGMENT OF NO CAUSE OF ACTION

(Filed January 26, 1959)

At a session of said Court held in the Stevens T. Mason Building, Lansing, Michigan, on the 23rd day of January, A. D. 1959.

Present: The Honorable Fred N. Searl, Circuit Judge for Kent County, acting Judge for the Court of Claims.

This matter having come on to be heard from time to time in this Court, and the Court having considered the documentary evidence and testimony of witnesses and arguments and briefs of respective counsel in this cause, and the Court having rendered its opinion wherein it determined that the plaintiff is entitled to no judgment against the defendants and that a public question is involved.

It is hereby ordered, adjudged and decreed that a judgment of no cause of action be entered against the plaintiff, without costs to either party.

/s/ Fred N. Searl,

Circuit Judge, acting Judge of
the Court of Claims.

CLERK'S NOTICE OF ENTRY OF ORDER

Notice is hereby given, in accordance with the Court Rules in such case made and provided, that Judgment of No Cause of Action was duly entered in the above entitled cause on January 26, 1959.

Helen Kohler, Clerk.

To: Butzel, Eaman, Long, Gust and Kennedy,
1881 National Bank Building,
Detroit 26, Michigan.

William D. Dexter, Esq.,
Assistant Attorney General,
Michigan Department of Revenue,
Tussing, Building,
Lansing, Michigan.

State of Michigan,
County of Ingham—ss.

Helen Kohler, Clerk of the Court of Claims, being duly sworn, deposes and says that she served a true copy of the above Notice upon the above-named attorneys, by placing one copy in each envelope securely sealed and addressed to said attorneys at their respective addresses above stated and depositing the same in the Branch Office of the United States Post Office located in the Stevens T. Mason Building, Lansing, Michigan, with postage thereon fully prepaid, on January 26, 1959.

Helen Kohler.

Subscribed and sworn to before me this 26th day of January, A. D. 1959.

Egene A. Daher,
Notary Public, Ingham County, State of
Michigan.
Commission expires October 12, 1962.

Excerpts from Transcript of Testimony; 115a
Statement of the Court

EXCERPTS FROM TRANSCRIPT OF
TESTIMONY

(1) Lansing, Michigan,
Monday, May 19, 1958.

(The Defendants' Motion for Summary Judgment was orally argued by Counsel for the respective parties, following which the Trial Court denied the Motion and made the following statement in support of its denial.)

(120) The Court: * * * As I sat here and listened to all these very fine arguments and realized that eventually this case will probably find its way to the Supreme Court of the United States, which will write perhaps one or more opinions, it seems a little presumptuous for a circuit trial judge to sit here and decide, after hearing arguments for an hour or so, the legal problems involved. * * * At any rate, that is the responsibility that one has.

(121) I will say, not that it is important at all, but counsel are entitled to know it, that this does not represent a snap judgment. It may turn out to be 100 per cent wrong, but after his motion was made and the Attorney General filed what to me was a very persuasive brief, I spent quite a little time at nights and other times in reading the authorities that seemed to be appropriate.

There were three annotations, as you gentlemen undoubtedly know, in the Michigan Law Reports. There is this book written by Professor Woosley, who views the subject, as well as some other standard texts. I made some notes here because I was not entirely sure as to

just what I would find readily available in the way of a library. I knew I only had to walk over to the Capitol to get all kinds of books, but I wasn't so sure about this building, but Mrs. Kohler has raided somewhere or other and has brought me some books that I have here before me. But I did make some notes that I have available, some of the things that the Supreme Court has said.

(122) It seems to me that it is the responsibility of the Court to deny the motion for a summary judgment and to permit the plaintiff to prove, or attempt to prove, or have the opportunity to prove actual discrimination and actual competition.

I have read these cases to which reference has been made very carefully by the lawyers, and I do not think that I would add a great deal to what has been said by reviewing at length the opinions, nor my reasons for feeling that they are not conclusive as a matter of law here.

One or two or few principles have impressed me as we have listened to the argument, read the briefs and read the cases.

In the first place, what is the purpose of Section 5219?

It seems to me that has something to do with whether we are to say that we must construe it in the light of the financial institutions which were in existence at the time the act was passed, or whether we are to say it was a sort of live inhibition which applies to all financial institutions as they come into being, if they are to measure up to a certain yardstick as to whether they are or are not within the ambit or purview of this section.

I find quoted here in 59 A.L.R. 14—I don't remember (123) which case it was first stated in; apparently the Palmer case—but at any rate, the purpose of the restriction stated:

"The intent or purpose of the restriction that the rate of taxation should not be greater than that assessed upon other moneyed capital in the hands of individuals, appended to the grant by Congress to the several states of power to tax the shares of national banking associations, was to render it impossible for any state, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks by favoring shareholders in state banks, or individuals interested in private banking, or engaged in operations and investments normally common to the business of banking."

And there are cited a substantial number of cases, a column of them here, from the United States Supreme Court, the Federal Courts, and many of the State Courts to support that summary of the purpose.

Now, if that be the purpose of the act of Congress, if Congress in saying to the states that this federal agency may be taxed by the states, but only on certain conditions, if that be the purpose, it doesn't seem to me that we should construe it to apply only to those institutions which were in actual competition with national banks at the time the act of Congress was passed, and thus leave the door open by changing (124) the nature of the institution or in changing economic conditions, changing needs of one sort or another for financial institutions, leave the door open for a state to create and foster an unequal and unfriendly competition by new institutions or old institutions which, due to changing conditions, either on the part of the banks or the institution, or some other reason, are now in competition when they were not before.

Now, in saying that, I again want to repeat what I have said several times, and I hope I keep on saying it so that my remarks are not misconstrued.

I am not ruling at this time, of course, that these institutions here involved, savings and loan and building and loan institutions are in competition. What I am saying is that I think it is a question of fact, and that the plaintiff should have a right to prove those facts, as it has alleged it can prove them.

As we read these other cases that are relied upon, it doesn't seem to me that the actual holdings are conclusively that as a matter of law a building and loan association cannot be in competition with a national bank.

Now, of course, the first case was the Mercantile case in the East having to do with a savings bank, and the court found that these were not in competition.

Then Justice Taft, Judge Taft on the Circuit, (125) had before him an Ohio case, and he said:

"It seems to me that building associations are certainly not be differentiated in their purpose or object, or practical effect, from savings banks and that the capital invested in them, though subject to a somewhat different rule of taxation, cannot be regarded as moneyed capital in competition with the moneyed capital in national banks, any more than is capital invested in savings banks."

Now, one of the interesting things about that particular case is that it eventually wound up in the United States Supreme Court on a different question, and the question before the Supreme Court was whether certain previous decisions involving the same bank were res adjudicata on the question of discrimination.

The Supreme Court in a case in 186 U.S. 458 affirmed Judge Taft's decision, but so far as I could read it, and I read it rather hurriedly, I found no references to building and loan associations or building associations. But the Court did say this interesting thing in discussing this question of res adjudicata, a former decision of the Court that there had been no discrimination in certain years. They first quoted Judge Taft on that point:

"Looking into the bill, however, in the former (126) case, and after an examination of the case of National Bank of Willington, v. Chapman, I find that, in order to support the averments of the bill, it was necessary in that case for the complainant to rely not only upon the statute of Ohio defining credits, but also on its practical effect in exempting moneyed capital in the hands of individuals in Ohio from taxation. The practical operation of a law of that character, to show how much, if any, discrimination there is, is a question of fact to be determined on the evidence."

"The adjudication, therefore, upon which the complaint relies is an adjudication not of law, but of fact; not of the fact at issue in the present case, but of the fact as to the practical operation of the law at the time of the adjudication, to wit, in 1887, 1893 and in 1894."

The Supreme Court of the United States affirming Judge Taft said this:

"And we need not point out that judgments based on such discrimination in 1885, 1887, 1893 or 1894 cannot be conclusive proof of the existence of discrimination in 1896 or 1897."

Now, the Court there was talking about a discrimination and not competition, but I don't see too much difference in principle. Whether there was discrimination (127) in the operation of the particular law between the bank and other institutions in one year was not conclusive as to there being discrimination two years later; and I believe as a matter of principle there is not too much difference between that and saying that a finding that there was no competition in 1933 is not conclusive that there is no competition in 1952.

Counsel have quoted at length from the Hartford case. I have made several notes of it, but I will not take the time to read them, except one that would seem to be applicable here.

"The question thus raised involves considerations both of fact and of law. To answer it, it is necessary to ascertain the nature and extent of the moneyed capital in the hands of individual citizens within the state and the relation of its employment, in point of competition, to the business of plaintiff and other national banks. It is necessary also to ascertain the precise meaning to be given the statute as applied to the facts in hand in order to determine whether the particular moneyed capital and the particular competition with which we are here concerned within the spirit and purpose of the statute. The question is thus a mixed one of law and fact, and in dealing with it, we may review the facts in order correctly to apply (128) the law."

This other case, the Hoenig case, if that were the only case on the subject, I would say that it would be quite persuasive that building loans were to be treated as entirely a species of institutions which could not be in

competition. There is much said in that majority opinion that would rather lead one to feel that that is the way the majority of the Sixth Circuit Court of Appeals felt, although there is some language which allows counsel on the other side possibly to find some comfort.

In talking about the building loans, they quoted Justice Taft to say that the purpose of these institutions is still to encourage the building of small houses by poor people and the savings from the earnings week by week in an amount sufficient to pay the mortgage debts incurred for the purchaser of land and the construction of the house.

Then the Court of Appeals goes on and says this:

"Practically all loans are of the amortized type in which payment is spread over a period of from ten to twelve years. National banks perhaps might, but as a matter of fact do not, and in the interest of good banking, should not, invest their funds generally in this manner."

I wonder if the bankers and building and loan association would care to have the Court of Appeals of 1933 (129) tell them how they should run their business. I doubt if they think that was conclusive today.

Whether national banks should, in the interest of banking, invest funds in this manner is something it seems to me you can't say that that is a legal decision that is like the law of the Medes and Persians and can never be changed.

So that case, while it does contain much language that supports the position of the defendant, it doesn't seem to me that it is conclusive.

I have not examined the record as Mr. Klein suggested, but there at least is reason to feel that the basis of the

court's opinion in part at least was founded upon fact.

Now, we have already discussed at some length this Shreveport, Louisiana, case. It has been pointed out by all of us that the court in discussing the effect of the Fourteenth Amendment does say there is sufficient basis for classification between building and loans and banks, but when we get over to discussing the matter of 5219, they talk strictly upon the factual proposition, and they say, in addition to what I think has been read here:

"The Supreme Court (of Louisiana) found: 'The testimony leaves no doubt that there has been no competition with national banks on the part of any concern lending (130) money on mortgage or real estate, because the national banks will never handle such loans.' The record contains evidence ample to support that finding."

That is a finding of fact, so that we must assume that the Court recognized that it was in part, at least, a factual question.

I have not spent very much time on the effect of this legislation. The argument can be made, as counsel have made, that one may draw a conclusion from the course of the legislation since 1933 that Congress intended that this statute and various other acts to be mutually exclusive.

On the other hand, it seems to me that that is somewhat a double-edged sword. After all, if Congress didn't change Section 5219, they left that reading just the same, and if they had intended that could be discrimination against national banks in preferring building and loan or savings and loan associations, it would have seemed rather easy to have written such an exception in Section 5219 rather than ask the courts to draw the conclusion from its failure to act.

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I am not going to speculate very much about what Congress meant when they didn't do something. When they do something, I will try to figure out what they meant, but when they didn't, I am not going to deny to the plaintiff the right to prove actual competition if they can do it. It is up to them.

Again I repeat, I may have been careless in some statement here, but I have no intention deciding this time that there is actually competition. That is a question of fact, and possibly a mixed question of fact and law to be decided when we get down to the end of the evidence.

What I am saying is I think it is a question of fact on which the plaintiff has a right to put in his proofs.

The motion is denied.

(143) **ESLER, BERTHA**, was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

Q. What is your official position?

A. I am Director of Incorporations of the Michigan Corporation & Securities Commission.

Q. And how long have you held that office?

A. I have been in that position for about twenty-five years.

Q. And that is with the Michigan Corporation & Securities Commission?

(144) A. Right.

Q. And were you with the Secretary of State's office before that?

A. I was.

Q. And did you do the same kind of work at the Secretary of State's office?

A. I did.

Q. And just what do your duties entail, Miss Esler, in this position?

A. Well, the keeping of—

Q. (Interposing): I know they are many, but I am talking particularly in respect to annual reports and privilege taxes.

A. I am so-called custodian of the records. I do not compute the fees in connection with the reports. They are there, and so forth.

Q. And if a report which should be filed is not filed, is it the duty of your office to follow up with that particular corporation and inquire why the report is not filed?

A. Our office does.

Q. Under your direction?

A. Under the direction of Miss Sawasky. I do not have charge of the filing of the annual reports. I testify to the records—if a corporation is delinquent, we are compelled to ask for a certificate. I can then testify because I make the search.

Q. And if any corporation required to pay a privilege fee fails (145) to pay such fee, it is under your jurisdiction to follow that up, is it?

A. No, sir, it is not. It is under the jurisdiction of Miss Sawasky, who has charge of the Annual Report Division.

Q. However, you do check records as to whether the fees have been paid?

A. I am in a position to know whether they have or not, yes.

Q. I see. I will show you a two-page letter, a copy of it, dated May 14, 1958, which has been marked Exhibit 24, directed to Mr. Gabow and to yourself on the Michigan Corporation & Securities Commission, and Mr. Doty, and ask you if you received the original of that letter or one of the duplicate originals?

A. I did.

Q. And did you, pursuant to that request, make an examination of the records of the Michigan Corporation & Securities Commission as requested in that communication?

A. Respecting the savings and loan, building and loan association, I did.

Q. Yes. And in respect to the statement in the first two paragraphs of Exhibit 24, page 2, would you tell the Court whether or not, insofar as the Michigan Corporation & Securities Commission—

* * * *

(146) Q. * * * —is concerned, the statements therein contained are true and correct? Just say yes or no.

* * * *

A. May I understand this clearly. This is Exhibit 24?

Q. (By Mr. Klein): Yes.

A. You want me to testify as to the—

Q. (Interposing): The first two paragraphs on the top of page 2, insofar as the Michigan Corporation & Securities Commission is concerned.

* * * *

(147) A. I believe this will answer the question: That the Michigan Corporation & Securities Commission has never received an annual report or a privilege fee in connection with a savings and loan or building and loan association.

Q. (By Mr. Klein): At any time?

A. At any time.

Q. That goes back from 1935 to date?

A. That's right.

Q. And has it been the interpretation of your office that such associations are not obliged to either file reports with your office or to pay privilege fees to your office?

A. It has always been so interpreted that we are not in any way responsible for the savings and loan associations.

Q. Nor to collect any fees from them?

A. Nor to collect any fees.

Q. Nor to get any reports from them?

A. That's right.

* * *

(148)

Gross Examination

By Mr. Dexter:

Q. Miss Esler, do you have anything to do whatsoever with the annual reports and fee determination of the Michigan Corporation & Securities Commission?

A. I do not.

Q. Do you have anything to do with the policy of determining whether or not annual fees are required to be paid by corporations?

A. I do not.

Q. That would include the annual fees of the savings and loan associations?

A. That is right.

Q. What did you mean by your statement in reference to the practice of the office? Was that something you just heard?

A. No, I happen to know that it is.

(149) Q. How did you happen to know?

A. There has been even prior to the time before we were the Michigan Corporation & Securities Commission.

Q. In reference to the 1952 situation, how did you come across that knowledge, Mrs. Esler?

A. Well, I might say I suppose in general understanding of being there.

Q. Was it hearsay? Did you hear it?

A. No. Because we have never had the savings and loan associations in our office, even when we were a part of the Secretary of State's office.

Q. But I am speaking in reference to the fees, the computation of a fee under a statute.

A. That's right. I do not have jurisdiction over the computation of the fees.

Q. Do you know whether or not any fees were, in fact, paid to the Corporation & Securities Commission pursuant to Act 85 of the Public Acts of 1921, as amended, for the year 1952, as far as building and loan associations are concerned?

A. It is part of my responsibility to know something about the filing of the annual reports, and I happen to know that they are not there.

Q. Do you know that there was no fees paid?

A. That's right; there were no fees paid.

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(150) DOTY, ETHAN A., was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

Q. . . . your official position with the State of Michigan, sir?

A. Director of the Building and Loan Division, which is a division of the Secretary of State's office.

Q. And you have held that position for how long, sir?

A. Since July 1, 1950.

Q. And in that connection, do I correctly understand that, under the building and loan statute, it is your responsibility to make certain that the annual reports of the building and loan associations were filed in '52 and years prior?

A. Yes. Section 19 of the building and loan statute requires an annual report to be filed in the office of the Secretary of State as of June 30th each year by each state chartered association.

Q. And when did it become the law for federal savings and building (151) and loan associations to file such reports?

A. An Act of 1954 required that Federal chartered savings and loan associations situated in the state of Michigan should make their first annual report as of June 30, 1955 and submit it for the year ended June 30, 1955, the fiscal year ended.

Q. So that prior to that time, no such reports were filed by Federal savings and/or building and loan associations?

A. Not with our office.

Q. And no fees were paid by Federal associations of that kind prior to that time?

A. That's correct.

(153) Q. . . . In the years 1950 to 1952, inclusive, what was the annual privilege fee collected by the Secretary of State from state savings and building and loan associations?

A. One quarter mill on each dollar of its paid-in capital and legal reserve, as required by Section 4 (a) of Act 85, Public Acts of 1921.

Q. Do you know whether the Secretary of State ever collected a four mill tax from any building and loan association in those years?

A. Not to my knowledge.

(154) Q. And do you know what the practice of your office was prior to 1950 in that respect?

A. It was the same.

Q. And was it the interpretation of the Secretary of State's office that the four mill annual privilege tax did not apply to building and loan associations and savings and loan associations?

A. That was the interpretation, because of the specific provision in Section 4 (a).

Q. Well, at all events, you never did collect any more than a quarter of a mill?

A. That is right.

Q. And have you collected more than a quarter of a mill at any time since 1952?

A. We have not.

Q. (By Mr. Klein, continuing): During the year 1952—do I correctly understand that federal savings and

federal building and loan associations neither filed annual reports nor paid privilege fees to the Secretary of State's office?

(155) A. That is correct.

Q. Since 1954 have they filed such reports and paid such fees?

A. They have, beginning with the fiscal year ended June 30, 1955.

Q. Did your office in 1953, or prior, endeavor to collect more than the quarter of a mill fee from any savings and/or building and loan associations?

A. No.

Q. You did not. Now, I understood your testimony, Mr. Doty, in connection with your duties and responsibilities, you supervised the filing, or at least the receiving of annual reports from state building and savings and loan associations each year as of June 30 of that year?

A. That is a function of our division, yes.

Q. And then do I correctly understand that under a section of the statute—if you will point it out to me—you are required to file, under Section 28, an annual report of condition of such associations to the Governor of the State of Michigan?

A. That is true.

Q. I will show you Exhibit—well, to start with, I will show you Exhibit No. 30 and ask you if that is a printed copy of a report from the Secretary of State's office on building and loan and savings and loan associations for the fiscal year ended June 30, 1952, under the facsimile signature of (156) F. M. Alger, Secretary of State?

A. That is true.

Q. And it bears the date of September 22, 1952?

A. That is the letter of transmittal date.

Q. Yes. And contained in that printed report are the financial statements of some thirty-six state savings and/or building and loan associations in Michigan for the year ended June 30, 1952, is that correct, sir?

A. That is correct.

Q. And those reports state the assets, liabilities, statement of operations, and earnings, first mortgage loans—

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Q. (By Mr. Klein, continuing): Number of invested share accounts, and dividend rates during the year?

A. That is correct.

Q. Did they cover all Michigan savings and/or building and loan associations for that period?

(157) A. They did.

Q. Upon what were these printed reports of financial conditions based?

A. We say in the "comments" that all the contents of that report were prepared from the annual report submitted by each association; and that is the source of all the information within that printed report.

Q. Do you have the copy of those reports with you?

A. Yes.

Q. The actual reports as filed?

A. Yes.

Q. And have you compared these printed reports of financial condition, as contained in Exhibit 30, with the reports of the respective associations filed with your office?

A. If you would say that we compared it at least three times in proofreading and preparing this printed report, I would say that we have certainly compared it.

Q. And under what section are the officers of the building and/or savings and loan associations, or were they, required to file such report?

A. Under Section 19 of the building, savings and loan statute.

Q. And are these reports made under oath?

A. They contain a sworn statement as a part of the cover piece.

Q. And they are to be signed by the president and secretary (158) of such association?

A. That is correct.

Q. And do you know whether or not there is any penalty or provision in the statute in respect to falsification of such reports by such officers?

A. Not in that particular section. In another section of the statute there is provision for penalty for incorrect reporting.

Q. Is that Section 27?

A. That is right.

Q. And it makes it a felony, punishable by one to ten years, if there are any false reports, does it not, sir?

A. Yes.

Q. And was Exhibit 30 prepared by the Secretary of State, Building and Loan and Savings and Loan Division, pursuant to the requirements of the statute to which you referred before?

A. It was prepared under the Section 19 requirement. I couldn't say whether it was prepared under Section 28 requirement.

(159) Q. It was prepared pursuant to a statutory requirement?

A. That is right.

Q. And do these statements show—I think we have covered it—the amount of mortgages outstanding as of the date of June 30, 1952?

A. That is true.

Q. And it shows the amount of the share investment account, or shares, does it not, sir?

A. It does.

Mr. Klein: I should like to offer Exhibit 30 in evidence.

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~~(160) Mr. Dexter: Defendants would object to Exhibit 30 as not the best evidence of the facts attempted to be established by the introduction of such exhibit.~~

Q. (By Mr. Klein): Do you have the reports here which can be compared with this? Do you have the actual reports of the associations with you in hand?

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(164) Mr. Klein: . . . I might ask this witness some further questions, because it might help your Honor in his ruling.

Q. (By Mr. Klein): Are you required, Mr. Doty, or your department, to examine the books and records of these associations under the law?

A. Yes.

Q. And did you have occasion to examine the correctness of the reports as contained in Exhibit 30?

A. No, for the reason that the examination is made at various times throughout the year, and the annual reports are based on the financial condition as of June 30 in each year.

Q. But you are charged with the duty, are you not, of collecting the fees based on a correct report as of June 30, 1952, for that year?

A. Yes.

Q. And therefore it would be your duty to determine whether that report or those reports correctly stated the financial (165) condition of the company so that you could get the correct fees?

A. For that we depend on the statutory requirement for the sworn statement.

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(168) The Court: At the present time the report will be received, but on the condition that we have subsequent proof as to the accuracy of the reports which were made to the Secretary of State by the various associations.

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(170) The Court: Well, they haven't yet been offered.
Mr. Klein: I have offered Exhibit 30 at the minute.

Q. (By Mr. Klein): I have had marked Exhibit 25, 26, 27, 28, 29, 31, 32, 33, 34, and 35, and ask you if these are the similar type of reports from the Secretary of State for the years ending June 30, 1947 through June 30, 1951, and from June 30, (171) 1953 through June 30, 1957?

A. Yes, they are.

Q. And they were prepared in the same manner and published under the same requirements, statutory requirements, as you have indicated in respect to Exhibit 30?

A. They were.

Mr. Klein: I should also like to offer Exhibits 25 through 29, and Exhibit 31 through 35, inclusive, into evidence, sir.

Mr. Dexter: I object, your Honor, for the same reasons that we object to the admission of Exhibit 30, and would also object to the admissibility of those outside of the year 1952 for the reason that we have a question of fact solely relating to the condition of competition for the calendar year 1952, and as your Honor ruled in reference to the plaintiff's motion for a summary judgment, it is factual within each particular period, and therefore,

any reports or evidence outside of that period are immaterial.

(172) The Court: Well, let's take one thing at a time there.

As far as the exhibits prior to 1952, I would think that they would be admissible if Exhibit 30 is admissible. It seems to me that that bears upon growth over a period of years prior to 1952, but if there wasn't discrimination in 1952, the fact that there may have been in '53 or '54 doesn't help us, or doesn't help you any, as far as '52 is concerned, does it?

Mr. Klein: Part of 1953 contains the last six months of '52, sir.

The Court: Well, it may be there is an overlapping of dates there that would make one additional exhibit admissible.

Mr. Klein: Yes.

(174) The Court: But my ruling is, at this time at least, before Exhibit 30 can be received finally, there must be received in evidence the reports upon which Exhibit 30 was based.

Q. (By Mr. Klein): Do you have the reports for the year ended June 30, 1952 and the year ended June 30, 1953, sir, with you?

A. Yes, I have them in the back of the room here.

(175) The Court: As far as that part is concerned, you are not objecting that this is a printed copy?

Mr. Dexter: No.

(181)

Lansing, Michigan.

Tuesday, May 20, 1958,

9:30 o'clock A. M.

(The hearing of this cause was resumed pursuant to the adjournment.)

The Court: Have I made a definite ruling an Exhibit 30? Can you tell me that?

Mr. Klein: You made a conditional ruling. On page 168, sir, of the transcript, you said:

"At the present time the report will be received, but on the condition that we have subsequent proof as to the accuracy of the reports which were made to the Secretary of State by the various associations."

The Court: Now, I want to reopen that subject.

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(196) The Court: You may cross-examine Mr. Doty if you wish or make any record you wish, but as far as I am concerned, I have come to the conclusion that as far as this is concerned, I am going to assume the Secretary of State performed his duty, and if he did perform his duty (197) under these rules that I have read from Corpus Juris, unless they don't apply in Michigan, and they seem to apply in every state in the Union—in fact, there are possibly one or two Michigan cases that can be distinguished that in general recognize it. One of them I made a note of, 159 Michigan, 424, but there are others cited in Corpus Juris.

Unless that rule doesn't apply in Michigan, and I can't conceive that the Michigan Courts are out of line with everybody else in the country on things of this sort, I am

going to change my ruling from yesterday and assume when an officer of the state such as the Secretary of State is required by law to make certain reports, make certain findings in order to make his report, I am going to assume he performs his duty, and I think the reports are admissible under the rule that has been stated here and quoted here.

Now, that doesn't mean that that is conclusive proof. You have a right to cross-examine the Secretary of State. You have the right to have produced, if you wish—after all, you represent the State. You are hardly like a private suitor. But, nevertheless, you have a right to have produced, if you wish, the reports or audits or anything else you want over there. If there is any question about any of those reports, we will give you the opportunity to cross-examine the persons who made the audit or the (198) persons who, on behalf of the association, signed and swore to it.

In other words, I am not depriving the State of Michigan from full right of not only proving that they are not true, but cross-examining as to their truth.

You can cross-examine anybody you want to. We have already got some of these people under subpoena, I suppose, coming in here, but, if necessary, you can have the rest of them. I have got all summer I can give you to make any record you want.

Mr. Dexter: For the record, I would like to clarify this right now. Is your Honor ruling that these exhibits are admissible as—

The Court (interposing): I am ruling that Exhibit 30 is received.

Now, I will hear separate arguments on the group of reports that were prior to 1952 and those afterwards. There may conceivably be some other points that apply

to them as to materiality, but as far as competency are concerned, I am ruling that the reports of the Secretary of State made pursuant to his statutory duty are to be received in evidence.

Mr. Dexter: As proof of what?

The Court: Proof of the facts which he finds therein pursuant to the statute.

Now, when he expresses a view as to whether they (199) perform an important function or not, I am not accepting that as being evidence. That is an opinion. But as far as he is stating the condition of those associations, they are received in evidence as proof of them. Not conclusive proof, you understand.

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(201) Mr. Klein (interposing): All right. We would like to offer Exhibit 25, which is the report of condition of the Secretary of State to the Governor for the year ended June 30, 1947.

Exhibit 26, a similar report, type of report, pursuant to statute, for the year ended June 30, 1948.

Exhibit 27 is a similar report of the Secretary of State to the Governor for the fiscal year ended June 30, 1949.

(202) Exhibit 28 is a similar annual report of condition by the Secretary of State to the Governor for the fiscal year ended June 30, 1950.

Exhibit 29 is a similar annual report from the Secretary of State to the Governor of the condition for the year ended June 30, 1951.

And, Exhibit 31 is a similar annual report from the Secretary of State to the Governor of the condition of Building and Loan and Savings and Loan Associations for the fiscal year ended June 30, 1953; which contains part of the 1952 business.

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(203) The Court: . . . I wonder if we could not reserve further consideration of these other exhibits, these exhibits other than 30 and 31? 31 may be received as being the same class as 30, because they both cover the year 1952, but the others, I wonder if we cannot reserve those until we have given these others an opportunity to be heard. And, in addition to that, it is (204) quite conceivable that some of the things they say will bear upon the reasons you have given for admission, so I would rather reserve decision on these others, both before and after the year 1952, and we can go ahead and not have the other witnesses wait any longer.

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(205) DOTY, ETHAN A., was thereupon recalled as a witness herein on behalf of the Plaintiff, and, having been previously duly sworn, testified further as follows:

Direct Examination (continued)

By Mr. Klein:

Q. Mr. Doty, I wanted to clear up one point.

Referring to Exhibit 30, I believe I asked you some questions about that yesterday. Would you look at Section 28 of the Building and Loan Association Code?

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Q. Now, referring to Exhibit 30, was Exhibit 30 prepared by the Secretary of State's office pursuant to Section 28 of the Building and Loan Association statute of Michigan?

(206) A. It was.

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Q. * * * And the same applies to Exhibit 31, does it not?

A. Yes.

Q. And were these reports reports to the Governor by the Secretary of State of the conduct and condition of all building and loan associations doing business in the State of Michigan for the years ended June 30, 1952 and June 30, 1953, respectively?

A. They were prepared on the same basis.

Q. Were they a report of the conduct and condition of all building and loan associations doing business in the State of Michigan during those periods?

A. They were, based upon the the annual reports filed.

Q. It was your duty, was it not, sir, to report on the condition?

A. According to the statute, yes.

(297) Q. (By Mr. Klein): You are in charge of that department, are you not, sir, for the Secretary of State?

A. Yes.

Q. And in making those reports, you were of the opinion that you were discharging your duty in reporting as to the condition of those associations for those periods?

A. That is correct.

Q. And you had the power to make examinations of any of the records and books of the associations in question before making that report?

A. Yes.

Q. And if you found any errors in the report; you would have indicated the correct facts in your reports, would you not?

A. Definitely, yes.

Q. And it was your opinion, in making those reports, that those reports truly and correctly reflected the condition of the associations in question for those periods?

A. Yes.

(208) Q. And does the same obtain, as far as you know, to Exhibits 25 through 35, inclusive?

A. Yes.

Q. Do you have with you the monthly report for the month of December, 1952, of these associations, the state associations, which I will show you on page 8 and 9 of our Affidavit of Merits?

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(211) Q. (By Mr. Klein): Mr. Doty, take the report, if you will, for the year ended December 31, 1952. I am not going to ask you the detail of it. I just want—

A. (Interposing): Which report?

Q. Of the Capitol Savings & Loan of Lansing.

A. Annual report, monthly—

Q. (Interposing): The monthly report of December 31, 1952.

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(212) Q. (By Mr. Klein): Without showing the figures, the Court has, I believe, instructed you to indicate what is on the form.

(213) A. It is a balance sheet statement of assets and liabilities which is similar to that published in the annual report.

However, the lower section of the report is captioned "Supplemental Information," and contains information of the nature of the operating expense for the month, the gross earnings for the month, the analysis of all mortgage loans closed during the month in five different categories, total of mortgage loans closed, mortgage loans or land contracts purchased during the month, what price

was paid for them, the total number of saving share accounts at the end of the month, the amount of withdrawals during the month, the amount of new private capital received during the month, the real estate activity during the month, the actual cash receipts for the month; also, the amount of money paid on applications for withdrawal, and a statement signed by the managing officer certifying that the information was taken from the books and records of the association as of the date indicated, and, to the best of his knowledge, were true and correct.

Q. And that type of monthly report is filed by each building and loan association with the Secretary of State's office?

A. Yes, but not required by statute.

Q. It is required by the Secretary of State, is it?

A. To my knowledge, there has never been a regulation requiring it. It was established procedure for them to be submitted (214) when I took over as Director of the Division, and it has been continued. They are valuable for statistical purposes, and they are most useful for supervisory purposes.

Q. And the balance sheet information is in substance the same, except for a different period, as that contained in Exhibit 30 and 31?

A. Yes.

Q. And in fact, other information summarized in Exhibit 30 and 31 is in substance comparable to the information—I am pointing to the heading "Miscellaneous Information" contained.

A. What is your question?

Q. A lot of the information in that form is the same as contained in the annual reports?

A. If you will confine that question to the balance sheet portion, the answer will be yes.

Q. Well, you describe in your annual report first mortgage loans, the number of first mortgage loans?

A. As at a given date, yes.

Q. As of a given date.

Now, this report shows the new ones that were taken during the month, does it not?

A. Under the "supplemental information" section, yes. It also shows the number of mortgage loans as of the date of the monthly report, which is similar to the contents of the annual report.

(215) Q. . . . Are these voluntary, Mr. Doty, or do you require the associations to file them?

A. I would say they are voluntary, because I have never required them to be filed.

Q. But they have always filed them?

A. Yes.

Q. Every one of them?

A. Yes.

Q. And they filed them because your office requested that they be filed; isn't that right?

(216) A. They have never been requested to send in monthly reports—purely voluntary.

Q. (By Mr. Klein): May I ask, who printed the forms, whose office?

A. They were printed by the Secretary of State's office.

Q. And how did these people get the forms? Did they come in and (217) get them, or did you send them to them?

A. No, we mailed them to them.

Q. And did you have a covering letter with them?

A. Only to the extent that we were enclosing a supply of blank monthly report forms.

Q. And they were just to burn them up, or that you wanted them back?

A. No. You asked me the question had I ever requested, and I said no.

Q. Had your office, as far as you know?

A. Not to my knowledge. There is nothing in the record.

Q. Had your office, sir? Did your office write a letter, or did the Secretary of State's office, in getting these forms to the associations?

A. You mean to get them started in the beginning?

Q. Yes, sir.

A. I have no knowledge of how many years back—certainly long before I was ever connected with the Division—I have no knowledge of how many years prior to my coming there that these monthly reports were furnished the Secretary of State.

Q. Well, in any event, you know that the Secretary of State prints the forms and sends them out to the associations?

A. Yes, I know that.

Q. And you know also that every association has filed monthly reports at least during the period you have been in office?

(218) A. Yes, that's right.

Mr. Klein: Well, your Honor, I would like to get, first I would like to have this marked and offer it as an exhibit.

The Court: Well—

A. (Interposing: How about the ruling, your Honor?

The Court: We will come to that. Is it your thought

the entire matter should go in, or are you directing your real inquiry here to the number of mortgage loans and quantity of mortgage loans made during the month?

Mr. Klein: We also want to show what the financial condition shows on the balance sheet, which is the same form as the report, except we want to have the December 31, 1952 balance sheet, because the Federals are of that date and the bank is of that date and we would like to make a comparison of that date.

The Court: Let me see one that is similar to it.

Mr. Klein: Yes, sir (handing document to the Court.)

The Court: I take it, Mr. Doty, in submitting Exhibit 30, which is the one I have in my hand, was your report to the Governor for the year ending June 30, 1952; you did not feel you were violating the inhibition of Section 7 by providing, on page 20, for instance, the financial statement for the fiscal year ending June 30, (219) 1952, for the Dowagiac Savings & Loan Association?

A.: No, sir, because the annual report was required by statute.

The Court: But you disclose the same information, except for a different period, that was on this monthly report, is that right?

A. Rather similar; this is more detailed. Basically, it contains the same major factors of asset and liability.

The Court: And if the building and loan association officers were subpoenaed in to bring in their books for that particular period, there would be nothing in this law that would prevent them from having to show their books in court, would there?

A. Not to my knowledge, no, sir.

(224) The Court: I appreciate he has a right to be protected by an official ruling on the matter. It is my

ruling that the matter is not privileged, and that if it is there is good reason for his answering, and he is directed to answer, subject, however, to the objection to the materiality and competency of the testimony.

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(225) The Court: I want to make that clear; I am not accepting this report as evidence without it being supported by these books, if counsel for the State wishes that.

(226) Mr. Klein: We appreciate that, sir.

Q. (By Mr. Klein, continuing): Now, will you be good enough, Mr. Doty, to go through the list on page 8 and the top of page 9 of these associations and select the monthly report for the month ended December 31, 1952, for each of those state associations?

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(234) The Court: . . . As far as the intervening plaintiffs are concerned, the Court may have been in error, but the Court made its ruling they are properly in here, and the cases are joined in (235) one lawsuit.

If I was in error, you could have attempted to appeal by way of special appeal. You may not have had to. You probably can wait until you get up on one appeal, but at least the ruling I made is made and is final until such time as the Supreme Court overrules me.

Now, it seems to me that any proof that properly applies to any plaintiff here will be applied to them. Any other proof that doesn't properly apply to a particular plaintiff will not be applied to them.

For instance, Exhibit 30, there is no particular reason we should say that was received as to Michigan National Bank but not as to the Houghton Bank, which may be one of the plaintiffs in the case. I don't know the names of the plaintiffs. I don't keep them in my mind. I have

heard so many banks first on one side and then the other, I don't even know what my own bank does in this matter, which side they are on.

But I don't ~~see~~ that we run into any serious trouble through any proofs that come in that have to do with the general situation. Anything like the Michigan National that is in competition or not in competition with Capitol Savings and Loan in Lansing, I assume that that won't apply to any bank up in Houghton or Alpena or any place else. But I don't (236) see any reason why we should be upset about it.

It seems to me we are going ahead in an orderly way, and when we get through, we will make it apply properly. Order of proof is a matter of discretion, unless somebody is going to be hurt. How are you going to be hurt? You know where Michigan National has its branches and what their claims are. So I think we will proceed the way we were proceeding.

Q. (By Mr. Klein): Mr. Doty, I will show you Exhibits 36-A through 36-O, inclusive, and ask you if these are the monthly reports for the month ended December 31, 1952, of the various savings and or building and loan associations described on page 8 and on page 9 and 10 of plaintiff's affidavit of merits which are state associations and there indicated in the affidavit of merits?

A. They are.

Mr. Klein: I would like to offer Exhibits 36-A through 36-O, inclusive.

Mr. Dexter: Mr. Klein, what are you offering them as?

Mr. Klein: I have stated it at great length before the Court indicated what his ruling is, and I refer you to the record for those purposes.

The Court: I said I was going to receive these (237) matters, but conditionally only, and as the rule, as I

understand it, is stated in this case in 322 Michigan 276, that the books or records upon which these reports are based must be available to you. They can be offered later, if you insist upon it.

You will have a right to insist upon it, if you wish, and you have the right to cross-examine with reference to those books and records.

Mr. Dexter: Your Honor, the reason I asked this, is plaintiff offering these as summaries prepared by the savings and loan association?

Now, as I understand it, that is what the rule in the Michigan case you refer to is: that a summary can be prepared from voluminous documents and offered in evidence, subject to the right of the opposite party to examine the original records. But is this being offered as a summary prepared by Mr. Doty?

The Court: No.

Mr. Klein: Mr. Doty didn't prepare these. These are signed by officers of the building and loan associations, filed as being true and correct.

Mr. Dexter: I believe, your Honor, that they should be offered in evidence as a summary by the persons who prepared those summaries.

(238). The Court: They are received conditionally. We have to go one step at a time. They are received conditionally, but unless they are connected up properly at the end, why, of course, I will not consider them.

Mr. Klein: We will endeavor to connect them up, sir.

Q. (By Mr. Klein): Mr. Doty, I show you Exhibits 37-A to 37-P, inclusive, and ask you if these are the originals of the annual reports of the same associations described in asking you about Exhibits 36-A, et al., for the years ended June 30, 1952, and June 30, 1953?

A. They are.

(239) Mr. Klein: I should like to offer into evidence Exhibits 37-A through 37-P, inclusive.

The Court: I assume there is the same objection?

Mr. Dexter: Right, your Honor.

The Court: The record may show that all these are received subject to the same objections, so that counsel won't have to state them at length each time, and there will be the same ruling. They will be received conditionally and be connected up later.

Q. (By Mr. Klein): And there are the annual reports which bear the signature of the President and Secretary of each of the associations and the seal and acknowledgment of both?

A. That is correct.

Q. You have been asked to produce your examinations of building and loan associations for the year 1952.

I am not asking him any privileged question yet.

Do you have them with you?

A. Yes.

Q. Is there any reason why you consider them privileged in this suit, sir?

A. Yes.

Q. Well, all right. You do consider them privileged.

Is there any reason why you would object to permitting the Secretary of State to examine them—I mean the Attorney General—but not in our presence, so we don't (240) see them?

A. No, I would have no objection to that.

Q. And would they indicate whether or not there are errors in the annual reports for the years '52 or '53?

A. No, they would not.

Q. But if there were any discrepancies, they would come to light, would they not?

A. Not necessarily so, because the examinations are made at dates throughout the year.

Q. What do your examinations show, without giving me any detail—I don't want the facts. I want to know what do they purpose to show? 9

A. They show a financial statement of condition, a detailed operating statement, a statement of legal reserve, undivided profits, delinquent loans, delinquent contracts, schedule of investments and securities, office building, real estate owned, a statement of the officers and directors and employees and their share holdings and indebtedness, if any.

Q. And what is the purpose of your making these examinations for building and loan associations?

A. Basically to determine the validity of each asset and liability account reflected on their books of record.

Q. Now, in the reports of condition, which have been marked, Exhibit 30 and Exhibit 31 admitted in evidence, and the others pending ruling, these pamphlets are available to the public (241) generally, aren't they?

A. That is true.

Q. The reports of condition?

A. That is right.

Q. And your examinations are made to assure the general public doing business with savings and loan associations and building and loan associations of some supervisory check— • • • as to the value of assets, the soundness of the operation, at least within the provisions of the statute, are they not?

• • • • •

(242) A. In answer to your question as stated, the contents of the question constitute probably the major objective and need for an annual examination.

Q. (By Mr. Klein): And do you know whether or not your form of examination is any different materially from examinations made of banks, as far as you know?

A. Yes. Of course, I don't lay claim to being thoroughly familiar with the report or the examination techniques used in examining banks, but it is my understanding that our examinations of savings and loan associations are substantially more detailed.

(243) Q. (By Mr. Klein): As I understand, Mr. Doty, these examination reports are available for the inspection of the Attorney General during the time of this trial?

A. Yes, sir.

(248) Q. (By Mr. Klein): May I ask you this, Mr. Doty: Do these associations file their charters and by-laws with your office?

A. Yes.

Q. And any amendments would appear there?

A. Yes.

(258) WHITTEMORE, SIDNEY G., was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

Q. Mr. Whittemore, you are an officer of the East Lansing Savings and Loan Association?

A. Yes, sir.

Q. And what is your office?

A. President.

Q. How long have you been president, sir?

A. I am not sure when I was president. I was secretary before that, but I don't remember just when it was.

Q. Do you recall what your office was in 1952?

(259) A. I don't remember whether it was secretary or president.

Q. Wasn't it executive vice president?

A. That is possible, yes. I haven't looked it up. Yes, sir, I was executive vice president then in '52. This is the '52 report?

Q. Yes, sir.

A. O.K.

Q. How long do you think you had been executive vice president prior to that time?

A. I don't remember the number of years.

Q. How long have you been employed by the East Lansing Savings and Loan Association?

A. Since September of 1932.

Q. When was it incorporated, sir?

A. In 1919.

Q. Do you have the articles of that association with you?

A. I do, sir.

Q. And the by-laws?

A. Yes, sir. Those are the articles. Here are the by-laws. (handing documents to counsel)

Q. Do you have copies of these?

A. I do not, sir. Those are originals. I have a printed copy of the by-laws.

Q. As amended or prior to the amendment, sir?

(260) A. I thought I had one. Here they are. (handing document to counsel)

Q. You don't have any of the articles?

A. I do not, no.

Q. This document which you say is the charter, does that go back to the date of incorporation?

A. I will have to look to see.

Q. Yes, sir.

A. Yes, sir, it does.

Q. And the by-laws also go back from the beginning, sir?

A. These are when we amended the by-laws, January 1955, when we adopted this amendment here.

Q. The amendment is on top?

A. Yes.

Q. And the rest are the old by-laws?

A. Adopted this January 24, 1952. They were completely rewritten at that time.

Q. And you have a copy of the previous by-laws?

A. Yes, sir, in the office. I do not have them here.

Q. Could you arrange to have them brought up promptly?

A. What do you mean by promptly?

Q. So that we can have them marked and offered in evidence.

A. You asked for '52.

Q. I know, but I am now inquiring as to the old one, sir,

(261) A. It is down at the office.

Mr. Klein: (To the reporter): Would you mark this.

(The Articles of Association was marked Plaintiff's Exhibit 38 by the reporter.)

(The By-Laws, 1952, was marked Plaintiff's Exhibit 39-A by the reporter.)

(Printed booklet of By-laws was marked Plaintiff's Exhibit 39-B by the reporter.)

The Court: Incidentally, Mr. Klein, I did understand the witness from the Secretary of State to testify they have on record over there all these articles of incorporation, do they not, the charters?

Mr. Van Zile: That is what he says, your Honor.

Q. (By Mr. Klein): I will show you a document which has been marked Plaintiff's Exhibit 38, and it consists of 6 pages, and ask you if that is the Articles of Incorporation—Articles of Association of your Building and Loan Association from the date of incorporation on August 4, 1919, with (262) various amendments through to January 24, 1952?

A. Yes, sir.

Q. And have your articles been amended since then, sir?

A. No, this is our last amendment, January '52.

Q. That is the last amendment?

A. Yes.

Mr. Klein: I would like to offer into evidence Plaintiff's Exhibit 38.

Mr. Dexter: No objection, except as to materiality.

The Court: Received.

Q. (By Mr. Klein): I will show you a document which has been marked Plaintiff's Exhibit 39-A, which has ten pages, under the heading "By-laws for Adoption at 1952 Annual Meeting," and then has appended to it on the front page a certificate of amendment to the by-laws, Section 18, dated January 27, 1955, and ask you if they are the by-laws of your corporation as presently constituted?

A. Yes, sir.

Q. And except for Section 18, they were the by-laws as they existed after the annual meeting in January of '52?

A. Yes, sir.

Q. And I will show you a little printed booklet which has been marked Plaintiff's Exhibit 39-B, By-laws of

East Lansing Savings and Loan Association, dated March 17, 1955, and ask you if that is a true and correct copy of Exhibit 39-A, including (263) the amendment of Section 18 to the by-laws?

A. To my knowledge, it is. I haven't read it recently to check it.

Q. So the only difference between the 1952 and the 1955 by-laws are Section 18?

A. That is right.

Mr. Klein: I would like to offer Plaintiff's Exhibit 39-A and 39-B in evidence.

Mr. Dexter: I object to Exhibit 39-A on the question of materiality, and for the further reason that it is the by-laws in effect in the period in question, that is, the year 1952.

(264) The Court: Well, Exhibit 39-A is received. It has been marked. 39-B will not be formally received at this time. It will be re-offered if it appears that it is material in some way. And, Exhibit 39-B, that is the printed copy, including the amendment?

Mr. Klein: It includes the amendment, and I am perfectly willing, sir, if we substituted for this 39-A the one that was in effect in 1952.

The Court: It may be received for purposes of convenience anyway, as a printed copy.

Mr. Klein: That is the only reason for it.

The Court: So the objection to 39-A is apparently good. If it becomes material you may re-offer it. I do not see how an amendment in 1955 could be very material.

(265) Q. (By Mr. Klein, continuing): Could you produce, or have produced, the previous by-laws of your association from the date of incorporation to date?

A. I might have to look and see if they are there. I haven't checked that file for some time. I just picked these up for 1952.

Q. You think they are there, don't you?

A. As far as I know, they are.

Q. Yes. And could you return with them when court reconvenes, because I think you will be on the witness stand?

A. What time are you going to reconvene?

The Court: 1:30.

A. I can be here.

Q. Yes, sir. Thank you. Now, in connection with your duties as executive vice-president in 1952, just what were your duties, sir, as executive vice-president?

A. The operation of the Association.

Q. You were in charge of the operation of the Association?

A. That is correct.

Q. And you directed the entire operation, sir?

A. With the help of assistants.

Q. With the help of assistants?

A. That is right.

Q. And you were the officer who formulated policies as to mortgage (266) loans?

A. The policies were set by the Board of Directors.

Q. Well, you were the chief executive officer in carrying out those policies?

A. That is correct.

Q. And the same in respect to savings accounts?

A. Yes.

Q. And you were in charge, overall charge, at least, and directly responsible for the keeping of the books and records of the Association?

A. Yes, sir.

Q. Including the financial records?

A. Yes, sir.

Q. And the making of reports to the Secretary of State?

A. Yes, sir.

Q. . . . I will show you documents which have been marked Exhibit 37-D and 37-D-1, respectively, and ask you if these documents are the original annual reports of the East Lansing Savings & Loan Association filed with the Secretary of State of Michigan for the fiscal years ended June 30, 1953, and June 30, 1952, respectively?

A. Exhibit 37-D-1 looks like it is all there, but 37-D does not look like all of it is here.

Q. What is missing, sir?

(267) Well, I was looking for one particular sheet and it isn't here. The one I am looking for is because it is a confidential sheet about our directors, and so forth, because I feel it is only our business and the State's; that is in one and isn't in the other.

Q. Except for that, those are the reports you filed with the Secretary of State?

A. That is correct.

Q. And were each of these reports prepared by the East Lansing Savings & Loan Association in the regular course of its business; and was it in the regular course of such business to make such reports to the Secretary of State?

A. Yes, sir.

Q. And each of these reports contain your signature as vice-president, do they not?

A. Yes, sir.

Q. And were they prepared from and based upon entries made in the books and records of the East Lansing Savings & Loan Association?

A. Yes, sir.

Q. And in each instance, referring to Exhibit 37-D and 37-D-1, did you, in making the reports, certify and swear that to the best of your knowledge and belief the books and records of said association correctly reflect the true financial condition thereof?

(268) A. Yes, sir.

Q. And the statements of schedules and data contained therein are true and correct?

A. Yes, sir.

Q. And the signatures appearing on all notes, mortgages and other instruments in connection therewith, are genuine?

A. Yes, sir.

Q. And that there are no undisclosed assets or liabilities?

A. Yes, sir.

Q. And you also sent copies of these reports to the Federal Home Loan Bank in Indianapolis, did you not?

A. Yes, sir.

Q. Do these reports truly and correctly reflect the entries and records of transactions recorded on the books and records of the East Lansing Savings & Loan Association for the periods in question referred to by Exhibit 37-D and Exhibit 37-D-1?

A. Yes, sir.

Q. Do you have the original books and records of the Association from which these reports were made, and upon which they were based?

A. Yes, sir.

Q. And would you be good enough to make them available for the inspection and examination of the Assistant Attorney General, or his office, in connection with this litigation?

(269) A. I have no objection.

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(272) Q. Mr. Whittemore, showing you Exhibit 36-E, which has been identified as the monthly report of the East Lansing Savings & Loan Association for the month ended December 31, 1952, would you tell us whether that report was prepared in the usual and ordinary course of business and regularly made out in the usual and ordinary course of business?

A. Yes, sir.

Q. It was filed with the Secretary of State in accordance with your direction as chief executive officer?

A. Yes, sir.

Q. And does it truly and correctly reflect the entries appearing on the books and records of the association for the period in question?

A. Yes, sir.

(273) Q. And it there shows, does it not, the number of new mortgages taken for the month of December, does it?

A. Yes.

Q. And those were mortgages taken by the association, and the amounts, and so forth?

A. Yes.

Mr. Klein: I'm not sure exactly of the ruling, but so there will be no misunderstanding, your Honor, I would like to make certain, and I again offer, if they hadn't been—I think they are in evidence, but again, to make sure, I want to offer 37-D, 37-D-1, and 36-E. I think your Honor ruled they were admissible subject to being verified by the witness from the association.

The Court: I think that was the idea, and, of course, subject also to the right of the Attorney General to inspect the books if he desires.

Mr. Klein: So as I understand it, these exhibits are admitted subject to those conditions in each case.

The Court: They are admitted.

Mr. Dexter: Your Honor, as I understand, it was subject to the right of the Attorney General to insist upon the best evidence rule and to go to these places of business with the Court for examination.

The Court: That's right. If you wish, we will go there and have the books marked as exhibits in the case.

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(276) Q. (By Mr. Klein): Mr. Whittemore, when the East Lansing Savings & Loan Association was incorporated, it originally had a capital of \$12,650, did it not?

A. At the original time?

Q. Yes, sir.

A. Yes, sir; that is what we show there.

Mr. Dexter: Your Honor, I am wondering whether or not this evidence in terms of the condition of the East Lansing Savings & Loan in 1919 is material to this lawsuit.

Now, if we are going to go into all the activities of these associations from the time of their incorporation, we are going to have a record much more voluminous than I believe (277) is proper.

The Court: Well, I assume counsel won't want to try to put in the annual reports for each of the years—

Mr. Klein (interposing): No.

The Court (continuing): —but in view of what has been said by Judge Taft and some of the other judges that have expressed their views on building and loans back in the earlier years, it seems to me it is competent to endeavor to show, if he can, what was said at that time, and based presumably upon the facts as they existed at that time, may not be conclusive today.

So you may proceed.

Q. (By Mr. Klein): Was the original capital subscribed by investment shares, sir?

A. To my knowledge, yes.

Q. And how is the other capital, the additional capital, or how was it subscribed—by additional investment shares?

A. By additional investment shares, yes.

Q. And what evidence of share ownership did a shareholder get in 1952 of his investment in shares?

A. A passbook with a certificate.

Q. Do you have a form of such?

A. I had quite a time finding it. I had to borrow somebody's old book to get it.

Q. (By Mr. Klein): I will show you a booklet, which is marked Exhibit 40, and ask you if that is a form of investment shares account?

A. Yes, sir.

Q. Of the East Lansing Savings Bank & Loan in effect in 1952?

A. Of the East Lansing Savings & Loan.

Q. Yes, Savings & Loan. You said yes, it was?

A. Yes.

Q. And on the outside cover I see it says "Savings Account No.?"

A. Yes.

Q. And then the name of the person who is the account owner?

A. Yes.

Q. And then in the first page is what is called an Optional Savings Share Certificate; is that correct, sir?

A. Yes.

Q. And then in the inside pages are the amounts invested, and also showing the repurchases in this case?

A. Yes.

Mr. Klein: I should like to offer Exhibit 40 into evidence.

Mr. Dexter: ~~No~~ objection, except the continuing one of immateriality.

The Court: It may be received.

Q. (By Mr. Klein): What do you mean by optional share investments, (279) sir?

A. That is the name of the investment.

Q. Well, what is the nature of it, please?

A. Well, they can save systematically or at their option.

Q. No fixed requirement?

A. That is correct.

Q. And were there any other methods of investment in '52?

A. Fully paid.

Q. Fully paid. What do you mean by that—one payment?

A. No. That would be multiples of a hundred dollars.

Q. But paid at one time?

A. They could add to it.

Q. Add to it each time?

A. They could add to it, but it would have to be in multiples of a hundred.

Q. And the certificate was issued in that connection?

A. That is correct.

Q. Do you have that kind of a certificate?

A. Yes, sir.

Q. This was the book in effect in '52, was it?

A. That's right, yes, sir.

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(280) (By Mr. Klein): I show you a book marked Exhibit 41 and ask you if it is the account investment book used in 1952 by the association for fully paid shares?

A. Yes.

Mr. Klein: I offer Exhibit 41 in evidence.

The Court: Witness, do I understand there is one document? That is, the book has the certificate in it?

A. Yes, sir.

The Court: There is not a separate certificate?

A. No. It is in the front of the book.

Mr. Dexter: The only entry in this book is one in 1955, but is this the same book?

A. It is the same book we used, yes. It is the only one I could find. We had quite a few, but when we just moved over into our new quarters, we threw all the old stuff away.

Mr. Dexter: No objection except the continuing one.

The Court: It may be received.

Q. (By Mr. Klein): Were there any other types of investment certificates—investment shares?

A. No, sir.

Q. And do I correctly understand by an investment in the association in 1952, an investor was not guaranteed any fixed rate of interest?

A. That's correct.

Q. In fact, he wasn't guaranteed any interest, was he?

(280½) A. We don't guarantee them.

Q. What was that, sir?

A. We don't guarantee them.

(281) Q. There is no contract to pay any interest?

A. No.

Q. And if I correctly understand, the investor in shares such as are described in Exhibits 40 and 41 was a stockholder of the corporation?

A. He was a shareholder.

Mr. Dexter: I object.

A. He is a shareholder.

Q. And he took the risk of loss and the risk of making a profit of the corporation; is that correct, sir?

A. Yes, I believe that would be right.

Q. And what was the dividend rate paid in 1952 on shares?

A. I don't know. I didn't look it up.

Q. Well, I will show you Exhibit 37-D, page 8, and ask you if it does not appear that the dividend rate for the period ended June 30, 1952, for that six months was 3% on the shares?

A. Yes, sir.

Q. And how long had the rate been 3% prior to that time?

A. I wouldn't be able to tell you, sir.

Q. And what is the rate today, sir?

A. Current rate is 3½%.

Q. And approximately how many shareholders did you have as of December 31, 1952?

A. I don't know, sir.

(282) Q. Well, would you be able to tell what it was in June 30, 1953, or June 30, 1952, by looking over this report?

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A. According to this report, there is 2,054.

Q. As of what time was that, sir?

A. June 30, '53.

Q. And June 30, '52 they were 1,588?

(283) A. Yes, sir.

Q. And as at December 31, 1952, referring to Exhibit 36-E, there was an aggregate amount of investment by shareholders of \$3,647,226.59?

A. Yes, sir.

Q. Was it possible for anyone in '52 to become a shareholder in your association?

A. Yes, sir.

Q. Was there any limit to the amount any shareholder could invest with your association in 1952?

A. No, sir.

Q. Was there any limit prior to '52 that you know about?

A. No, sir, not that I know of.

Q. When a person became a shareholder, he became a member, did he?

A. That is right.

Q. And that membership gave him a right to vote?

A. Yes, sir.

Q. But with limitations?

A. Yes, sir.

Q. What were the limitations, sir?

A. He couldn't vote over 20 votes.

Q. Couldn't vote over 20 votes for the management; is that right?

A. Could not vote over 20 votes at the annual meeting.

(284) Q. And what other obligations, if any, were there, or rights were there as a shareholder—

A. (Interposing): All rights to share in the earnings.

Q. A right to share in the earnings?

A. That is right.

Q. And take the risk of the losses; is that correct, sir?

A. If there would be any, but we build a reserve so there won't be, we hope.

Q. You hope?

A. That is right.

Q. Now, there is no requirement that a shareholder become a borrower?

A. No, sir.

Q. And there was no requirement in 1952 that a borrower become a shareholder, was there?

A. No, sir.

Q. Now, what economic classes income wise and wealth wise were your investors in 1952?

A. I would not know.

Q. Were they from the poorer classes solely?

A. I don't know their financial status.

Mr. Dexter: I object to—

Q. What was the largest accounts you had in '52?

A. I am sorry, I wouldn't know.

Q. Did you have investors who were trustees?

(285) A. Possible. I don't know. I would have to look the record over to see.

Q. Could you ascertain that?

A. Yes, some other time.

Q. Did you have investors who were business people?

A. Yes.

Q. Did you have investors that were organizations seeking investment?

Mr. Dexter: Your Honor, I believe that this line of questioning, even though building and loans under our general objection could be considered subject of relevant inquiry, that this line of questioning is completely extraneous and immaterial.

The Court. Objection overruled.

Q. (By Mr. Klein): I see in a brochure you put out, your association, that you seek investment accounts for your shares.

A. Yes, sir.

Q. What do you mean by investment accounts?

A. Fully paid shares, sir.

Q. Fully paid shares and without limitation as to amounts?

A. That is correct.

Q. You have any number of investments in excess of \$10,000, don't you?

A. Yes, sir.

Q. And you are anxious to get as large a number of substantial (286) investments of that kind as you can get, aren't you?

A. Yes, sir.

Q. Do you have any notion as to the average amount of your investment shares?

A. I do not, sir.

Q. And you don't know what it was in '52?

A. No, sir.

Q. And I also see that in your literature you seek out organizational accounts for investment, and so forth?

A. Yes, sir.

(287) Q. (By Mr. Klein): And in 1952 your organization advertised extensively, did you not?

A. Yes, sir.

Q. And you advertised in the newspapers?

A. Yes, sir.

Q. You advertised by radio?

A. Yes, sir.

Q. Television?

A. Yes, sir.

Q. And by direct mail advertising?

A. Yes, sir.

Q. And in 1952 you tried to get as many investors in your shares and for the largest amounts that you could, didn't you?

A. Yes, sir.

Q. And you did so because the more that was invested in your shares the more would be available for the mortgage and other ends of your business?

A. Yes, sir.

Q. Now, looking through your reports, Exhibit 37-D and D-1, would it be fair to say that a major portion of the assets of the association were employed by making loans to people secured by mortgages?

A. Yes, sir.

Q. What portion approximately of your assets were employed in this (288) manner in 1952?

A. I don't know the exact amount.

Q. Well, I will show you your balance sheet as of December 31, 1952.

A. The bigger share of it. That is the only purpose we are in business, is to take savings and make mortgage loans. That is what we are given a charter for.

Q. But there was no requirement or policy in '52 of your association that the people who invested the shares would take the mortgage loans?

A. No.

Q. And there was no requirement that the people who borrowed money on mortgage loans would be investors; is that correct, sir?

A. That is correct. I would like to make one statement, however, that any borrower has to be a member under the law.

Q. Let's get into that, since you mention it.

A. All right.

Q. You advertise, do you not, for borrowers throughout this locality?

A. Yes, sir.

Q. What locality did you operate it in 1952?

A. East Lansing and surrounding areas.

Q. And you advertised in the newspapers to get people to borrow money from your savings and loan association?

(289) A. Yes, sir.

Q. You did not merely go to people who were then members?

A. No, sir.

Q. You went to people who were not members to see if they would borrow money from your institution?

A. They came to me after advertising; they came to me.

Q. They came to you?

A. Yes, sir.

Q. And then they came to you and they made an application for a loan?

A. Yes, sir.

Q. Do you have an application form, sir?

A. Yes, sir.

Q. Was this the one used in '52, sir?

A. Yes, sir.

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Q. I show you a 4-page printed form marked Plaintiff's Exhibit 42, headed, "Application for Mortgage Loan, East Lansing Savings and Loan Association," and ask you if that is the application form used in 1952 by your association in respect to loan applications?

A. Yes, sir.

Mr. Klein: I would like to offer Plaintiff's (290) Exhibit 42 in evidence.

Mr. Dexter: No objection, except our continuing one.

The Court: Received.

Q. (By Mr. Klein): Now, looking at Plaintiff's Exhibit 42, the association got the name of the applicant, the wife, the address, the name of the employer, number of dependents, place where employed, the number of years employed, and the financial statement, did they not, sir?

A. Yes, sir.

Q. You then had marked the amount the applicant wished to borrow?

A. Yes, sir.

Q. You also had a provision in here where he indicated what his annual income was?

A. Yes, sir.

Q. And what his annual charges against income were?

A. That is right.

Q. And then you had a place on the second page for a description of the property, and whether it is proposed construction, under construction, or existing construction?

A. Yes, sir.

Q. And then the third page refers to title conditions, about how it is being purchased or how it is owned, and then there is a place for the report of appraisers?

(291) A. Yes, sir.

Q. Now, what procedure just generally would you follow when an applicant came to your association in 1952 for a loan?

A. Fill out the application blank, sign it, and then it goes to the appraisal committee. They have the power

to grant the loan, and at the monthly meeting of the board it is presented to the board for their approval.

Q. You send out appraisers to appraise the property, would you not?

A. Yes, sir.

Q. And then you also consider the net worth of the applicant and his earnings and his potential net income available?

A. Yes, sir.

Q. You wanted to make sure that you had good mortgage security as well as personal financial security?

A. Yes, sir.

Q. And at what basis of valuation did you take loans, did you require as a minimum?

A. I don't quite understand your question.

Q. In other words, if a man wanted to get a mortgage loan of \$10,000, what value would be required to be on his property in order to get a \$10,000 loan?

A. Let's put it this way, that the law requires that we cannot loan more than 75% of our appraisal.

Q. In '52 was that?

(292) A. Yes, sir.

Q. What was the policy of your association at that time?

A. As far as I know, it was the 75% maximum.

Q. And what was the average amount of appraisal you used in '52?

A. I don't remember that, sir.

Q. It was less than 75, wasn't it?

A. I don't remember that, sir.

Q. You didn't always loan the maximum, did you?

A. No, sir. That is the maximum we can go to under the law.

Q. And conservative and careful management would have dictated that you go below the maximum limits?

A. We quite often do, sir.

Q. I am talking about '52.

A. We probably did.

Q. And you undoubtedly did?

A. Probably did.

Q. Would it be a fair statement to say that your average is between 60 and 65% in loan value?

A. I don't know, sir.

Q. You wouldn't say that was incorrect?

A. No.

Q. Now, until the point that an applicant got a clearance from your association, he was not necessarily a member?

A. No.

Q. In fact, for the most part, such applicants were not members, (293) were they?

A. No.

Q. The loan application might be rejected.

A. That is correct.

Q. Rejected for what reason, sir?

A. Either credit report wasn't correct, or else they wanted more than we could loan them.

Q. And were the loan applications and the basis of the loans followed by your association in '52 substantially different from the bank form applications in making similar loans?

A. I don't know. I didn't see any bank applications.

(294) Q. Did you ever make any loans in 1952 on commercial properties?

A. Not to my knowledge.

Q. You wouldn't say that you didn't, though?

A. No; not to my knowledge.

Q. But for the most part your loans were on residential properties?

A. That is correct.

Q. And do you know what the average amount of your loans were in 1952?

A. I do not.

Q. Well, when the loan was approved, was the applicant required to become a member of the association?

A. Yes, sir.

Q. And what did he sign that indicated that he was a member of the association?

A. He signed a signature card.

Q. Do you have such a signature card here?

A. I don't, no, sir.

Q. Could you have one produced and sent here?

A. That wasn't listed.

Q. I know it, sir.

A. But I could have it sent down to you.

Q. Yes, sir. And, what requirement was there imposed on a borrower when he became a member; what burden, if any?

A. I don't quite see what you mean.

(295) Q. Did he have any liability, any obligations, any duties as a member?

A. Only in so far as he had a loan, he had to pay the loan back.

Q. He had to pay the loan back?

A. Certainly.

Q. He would sign a mortgage note and he would sign a mortgage securing the mortgage note?

A. Yes, sir.

Q. And other than that, he had no other obligation as a member borrower, or otherwise?

A. He was entitled to a vote at the annual meeting.

Q. He was entitled to one vote?

A. Yes, sir; that is by law.

Q. But other than that, he had no obligation?

A. No, not to my knowledge.

Q. Now, would you say that the East Lansing Building & Loan Association was adapted from the old English society of savings plans, savings and loan associations?

A. I don't know.

Mr. Dexter: You Honor, I would say that that question is quite immaterial.

Mr. Klein: Well, I think it bears on the history of this.

The Court: I don't know. Maybe we have got to find out what the old English system was.

(296) Mr. Klein: We will show it to you, your Honor.

The Court: Well, I wonder if that is competent.

Q. (By Mr. Klein, continuing): Well, was it based upon the early type of loan association initiated in the United States in 1831 by small community groups, as a means of combining their savings on a safe and profitable plan, and also to make funds accessible to members of their own group?

A. You are reading our brochure, which is a history of savings and loans in the United States, a short history.

Q. Yes. That was the original type of the building and loan association, wasn't it?

A. That is right.

Q. And then later funds were made available to others than members in the community for long-term home financing?

A. No, I wouldn't say that; they were members; when they have a loan, they are a member.

Q. But they were not members until they applied for loans, and they do not invest in the corporation?

A. That is under the state law that the legislature passed.

Q. I am asking you a question. They do not invest, and they are not required to invest in the association?

A. No, sir.

Q. And they are not members until the time their borrowings become effective?

A. That is correct.

(297) Q. Now, I suppose in the operation of your business, sir, you have occasion to read a lot of different publications issued by savings and loan associations?

A. Yes, sir.

Q. And do you read The Savings and Loan News, sir?

A. Some parts of it.

Q. And have you ever heard of Mr. Norman Strunk, executive vice-president of the Union U. S. Savings and Loan League?

Mr. Dexter: Your Honor, I object to magazine references in this lawsuit. I do not think it is competent evidence.

The Court: We will see when we get to it. Right now he wants to know if he knows Mr. Strunk. That cannot hurt anybody—I hope.

A. Yes, sir.

Q. (By Mr. Klein, continuing): And you know he has written extensively on building and savings and loan associations?

A. Yes, sir.

Q. And as executive vice-president, and now president of this East Lansing, Association, I suppose you knew pretty much the general nature and character of operations of building and loan associations throughout the State of Michigan?

A. I know how ours is operated.

Q. And in that connection, is your association a member of the (298) U. S. Savings and Loan League?

A. Yes, sir.

Q. And how long have you been a member of that Savings and Loan League?

A. I don't know, sir.

Q. Were you a member in 1952?

A. Yes, sir.

Q. And had been for some time before, hadn't you?

A. To my knowledge, yes.

Q. (By Mr. Klein, continuing): From your knowledge as operating building and loan associations and savings and loan associations, being a member of the U. S. Savings and Loan League, would you have any opinion as to the correctness of a statement appearing by Mr. Strunk in the April 1954 Savings (299) and Loan—

Q. (By Mr. Klein, continuing): —that investors in savings and loan associations have a slightly higher income than those which typically use banks for savings?

The Court: You may answer the question yes or no; do you have an opinion?

A. I do not have an opinion on that article, no.

Q. (By Mr. Klein, continuing): I am asking you on the facts, not on the article?

A. I thought you asked about the article.

Q. (By Mr. Klein, continuing): Do you have an opinion, sir, from your long experience in the savings and loan business as to whether or not the income of

your investment shareholders in 1952 were higher, equal or lower than savings depositors in (300) banks?

A. I would say higher.

Q. Would you have an opinion as to the income or economic strata of borrowers from savings and loan institutions, as compared with mortgage borrowers from banks?

A. I wouldn't.

Q. You don't—

A. No.

Q. You have no opinion?

A. No, sir.

Q. Your association sought loans from all economic classes?

A. Yes, sir.

(301) (By Mr. Klein, continuing): Upon what did you base that opinion, Mr. Witness?

A. Which opinion is that, sir?

Q. That investors in savings and loan associations were in a higher economic bracket than depositors in banks?

A. That is not what I said. I said the income on our investments were higher than they were on the savings accounts (302) in the bank. I didn't say what their income was, I don't know. I know what we paid them.

Mr. Dexter: Your question then wasn't related to the economic condition of the particular individual?

A. I thought he meant whether we paid a higher rate than the bank; that is what I thought he meant.

The Court: If the witness understood it that way, he understood it differently than I did; so apparently he has got it clarified now.

Q. (By Mr. Klein, continuing): Do you have investors who are professional people?

A. Yes, sir.

Q. Business people?

A. Yes, sir.

Q. Executives?

A. Yes, sir.

Q. Trustees and executors of estates?

A. We have trust accounts, I don't know about trustees.

Q. Corporations?

A. I don't know; I would have to look my records over to see; I don't know.

Q. Business firms?

A. I would have to check my records, sir.

Q. Institutions, like educational institutions?

A. No, sir.

(303) Q. Societies of different kinds investing funds?

A. I don't know what you mean by "societies."

Q. Well, any organization, churches?

A. Yes.

Q. Charitable organizations?

A. If you talk about churches, yes.

Q. Charitable organizations?

A. I don't know about charitable.

Q. Cemetery organizations?

A. Not any cemetery organizations, I know that.

Q. Your organization sought investors from all classes, anyone who would invest, isn't that correct?

A. Yes, sir, that is correct.

Q. Well, you have lived in East Lansing a long time, haven't you, sir?

A. Yes, sir.

Q. And as an officer of your organization a long time, you would pretty much know in what economic level your shareholders would be, wouldn't you?

A. No, sir.

Q. You don't know your shareholders?

A. No, I don't know what their incomes are.

Q. Are they in the poor people class level, moderate, well-to-do?

A. Probably we have some from all classes.

(304) Q. Probably?

A. Probably; I would have to check to find out. I wouldn't go and check their financial statements; I don't know them.

Q. And you are trying to seek as many and as large accounts as you can get?

A. Yes, sir.

Q. What types of mortgages did you take in 1952?

A. Mortgage loans on homes.

Q. On homes?

A. Yes, sir.

Q. And you gave F. H. A. mortgages?

A. No, sir.

Q. You never had F. H. A. mortgages?

A. I never have, no, sir.

Q. Your institution?

A. No, sir.

Q. And did you have veterans' mortgages?

A. I don't know if I made any in 1952, but I made some, I have some in the file, but whether they were made in 1952, I don't know.

Q. I will show you this report.

A. They might have been made in 1952.

Q. (Handing document to the witness.)

A. This shows the total loans; it doesn't show what was paid that year, does it?

(305) Q. Well, V. A. guaranty?

A. That is the number in the folio; it doesn't show in that year.

Q. Were you making those loans?

A. I don't remember whether I did in 1952 or not.

Q. You made them before?

A. Yes, sir.

Q. Did you adopt any policy to stop them?

A. We just discontinued.

Q. When did you adopt that policy?

A. I couldn't tell you; I don't know.

Q. Did you also make conventional mortgages?

A. Yes, sir.

Q. And what was the average duration of those mortgages?

A. Well, most of them are written for around, all the way from ten to twenty years.

Q. What was the average duration?

A. I don't know.

Q. And they were amortized monthly?

A. Monthly.

Q. Equal amounts monthly?

A. Yes, sir, set up on a monthly payment basis.

Q. And who were your competitors on mortgage loans in 1952?

Mr. Dexter: I object to that question, your Honor. That is the ultimate question at issue.

(306) The Court: Well, I am not sure whether it is or not. I think probably you had better define the word "competitor" to see if we are all talking about the same thing here.

Q. (By Mr. Klein, continuing): Well, what other organizations in Lansing in 1952 were also out seeking mortgage loan business secured by residential mortgages?

A. Insurance companies, banks.

(307) Q. Was the Michigan National Bank out seeking mortgage loan business in '52 secured by residential mortgages?

A. Yes, according to the advertising which I saw.

Q. According to their advertising. And being in the business, you would be pretty aware who is out seeking that type of business, since that was the principal phase of your business, wasn't it?

A. Yes, sir.

Q. And was the Michigan National Bank a sharp competitor for that type of business in 1952?

A. I don't know what they wrote.

Q. Didn't you make yourself aware of the type of mortgage loans they made?

A. They made mortgage loans. What type, I don't know.

Q. Secured by residential mortgages?

A. I don't know what kind they were.

Q. You knew they made FHA loans, didn't you, in 1952?

A. The reports came back to me they did.

Q. They did?

A. According to the reports, they did.

Q. And they made Veterans guaranteed loans, did they not?

A. From my report.

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(309) Q. (By Mr. Klein): Looking at page 5 of Exhibit 37-D, your annual report ended June 30, 1952, and page 11 of Exhibit 37-D-1—one is 37-D and 37-D-1—there is an analysis on those pages of the mortgage loans made by your association during each of those fiscal years?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And it shows in the one case you made mortgage loans in excess of \$1,300,000?

A. Yes, sir.

Q. And in the other case in excess of \$1,285,000?

A. Yes, sir.

Q. And in each case it is indicated that some of the loans were for construction; is that correct, sir?

A. Yes, sir.

Q. Some for the purchase of homes?

A. Yes, sir.

Q. Some for refinancing of mortgage loans by another lender?

A. Yes, sir.

Q. And some for additions, alterations, repairing and reconditioning?

A. Yes, sir.

Q. And then you have a substantial amount of loans for all other purposes. What would they be?

(310) A. They were loans that didn't fall in these particular categories.

Q. Well, what were the other purposes—money borrowed for private use?

A. I would have to look up the records on it. I don't know.

Q. Well, could it be in that class?

A. I don't know.

Q. Did you make loans for that purpose?

A. I wouldn't want to say what it is for until I looked up my record.

Q. Did you ever make a loan for other than building or refinancing purposes? What other purposes could fall within that category "Loans for all other Purposes"?

A. I would have to look it up.

Q. What does that mean, sir? You had this signed. In fact, you signed it, didn't you?

A. I would have to look at the loan to find out what the classification was, sir.

Q. (By Mr. Klein): You don't know of your knowledge of any purpose other than what is here?

A. I would have to look at my record to find out what the purpose (311) was.

Q. We are not asking you on a specific loan. I am asking you what would be the character of the purpose?

A. There might be several.

Q. And what would the several be?

A. I can't make that statement until I see the card.

Q. Not tied in to any amount here, what would be the purpose for which you would make loans other than the first four purposes?

A. I'm sure I can't say until I can look at the records and see what the loans were for?

Q. You do operate the business?

A. Absolutely.

Q. And you know you made loans for other than construction, purchase of homes, refinancing and alterations; is that correct, sir?

A. But I would have to look up the record, because I don't divide that up under those classes. My bookkeeper does that, and I would have to go check the record to find out.

Q. Can you do that and come back and advise the Court what the purposes were, or do you think you can refresh your memory now in general what they were?

A. I don't know. I can't tell you if I don't know.

Q. You also engaged in the business, did you not, sir, of Traveler's Checks and money orders in 1952?

(312) A. Yes, sir.

Q. And were there any other businesses you were engaged in at that time?

A. Not to my knowledge.

Q. Any other functions you served?

A. Not that I know of.

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Q. (By Mr. Klein): I will show you a photograph that is marked Plaintiff's Exhibit 43 and ask you if that is your present East Lansing Savings Bank banking office?

A. That is our present East Lansing Savings & Loan office and not a banking office. It is a savings and loan office.

Q. And who helped fixture the interior of that office?

Mr. Dexter: Your Honor, I think that is quite immaterial.

Q. (By Mr. Klein): Is this a correct picture—I am showing you a pamphlet of the interior of it.

A. That is correct.

Q. And it is set up with counters like a bank, isn't it?

A. It is set up with counters.

Q. Like a bank?

A. They are savings and loan counters.

Q. In fact, a banking installation firm installed that for you, didn't they?

(313) A. They do banks and savings and loan both.

Q. They do both?

A. Yes, sir.

Q. And it has the appearance of a bank, does it not?

A. It has the appearance of a savings and loan.

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Mr. Dexter: Your testimony wasn't in reference to
'521

A. No. He is asking me if that is our present office.

Q. (By Mr. Klein): I will show you page 3 of Exhibit 43-A and ask you if that is a picture of your present interior—and I said “present” in each case—of your savings and loan (314) office?

A. Yes, sir.

Q. When was this office built, sir?

A. We just had an open house last week.

Q. Last week?

A. Yes, sir.

Q. And also in this book, 43-A, on the second page there is a picture of your office as it was in 1939: Was that to date?

A. That's correct.

Mr. Klein: I should like to offer Plaintiff's Exhibit 43 and 43-A, the booklet, into evidence, and the booklet I am only offering for the purpose of the pictures, and nothing else.

Mr. Dexter: I would, of course, object because they pertain to a period subsequent to the date of this lawsuit, and plaintiff has not eliminated the other parts of the exhibit that he marks 43-A, so obviously he can't just offer part of it by offering it all. I will object that this is subsequent to the period in question, completely immaterial.

The Court: Well, Exhibit 43 is not received. Objection sustained. The picture of the interior of the present office is not received.

Now, if there is a picture of the building in '39 that can be some way separated, I would accept it for what it shows or what it is worth.

Mr. Klein: Your Honor, may I offer these exhibits as part of a separate record, sir?

The Court: You may.

Q. (By Mr. Klein): Are you generally familiar with the information and data appearing in the Savings & Loan Fact Book of 1957 of the United Savings & Loan League, having a lot of statistics for the periods of '52 and prior—1952 and prior?

A. I don't have knowledge. I have looked at it, that is all.

Q. Have you read them?

A. No, sir.

Q. You do not read them?

A. I haven't read them all.

(316) Mr. Dexter: Your Honor, we might back up a minute.

In reference to these exhibits, there was quite a bit of testimony presented by the witness in reference to those, and I assume that that should be stricken from the record along with the exhibits.

The Court: I think there was some as to who furnished the fixtures, something of that sort. It may go to a separate record. It is not received in evidence.

Mr. Klein: I don't know if I have offered Exhibit 42, your Honor. I don't think I did, and I would like to offer it. That is the application for mortgage loans.

The Court: I have got it marked received, so I think you did. At any rate, it is received.

Q. (By Mr. Klein): Did you bring any of the advertising data we asked you to bring?

A. Advertising data for '52 I do not have.

Q. You do not have any?

A. No.

Q. Do you have any that you use now that is similar to that you used in '52?

A. It wasn't subpoenaed.

Q. I asked you for '52, I appreciate that.

A. That's right.

Q. Do you presently have any?

A. Yes, we have advertising.

Q. And is it similar in character to that you used in '52?

A. I don't remember now what we used in '52.

Q. You don't remember?

A. No, sir.

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(326) WRIGHT, BERT D., was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr Klein:

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Q. And you are a resident of Port Huron, sir?

A. Yes, sir.

Q. What is your present occupation, Mr. Wright?

A. Executive vice president of Citizen's Federal Savings and Loan Association.

Q. And how long have you been employed by the association?

A. Practically 20 years.

Q. You say you are executive vice president?

A. Yes, sir.

Q. And how long have you been executive vice president?

A. About ten years.

Q. And prior to that?

A. Secretary.

Q. And you are a shareholder of the association?

A. I have a savings account with the association, yes, sir.

Q. And that makes you a shareholder?

A. Well, they call it shareholder. It is a savings account.

(327) Q. You are not a depositor, you are not a creditor of the association?

A. No, sir.

Q. And you share in the risks of gain or profit?

A. On our savings account, I receive a dividend, yes, sir.

Q. And what were your duties in 1952 with the association?

A. Executive vice president.

Q. Just what were those duties?

A. Being, you might say, general manager.

Q. In other words, you were the chief executive officer?

A. Yes, sir.

Q. And your association was incorporated in what year, did you say?

A. 1938.

Q. Do you have a copy of your articles and by-laws?

A. This is our present charter and by-laws.

Q. Has it been amended?

A. Yes, sir. It has been changed. This is the original charter.

Q. This is the original charter?

A. Yes, sir.

Q. And the white one, when was that changed, sir?

A. December 23, 1949.

Q. I show you a printed booklet marked Charter and By-laws of the Citizen's Federal Savings and Loan Association of Port Huron, which has been marked Exhibit 44, and ask you if that was a true and correct copy of your original charter and by-laws up until December 23, 1949?

A. Yes, sir.

Q. And I show you a booklet which has been marked Exhibit 44-A and ask you if that is a true and correct copy of your charter and by-laws since December 23, 1949?

A. Yes, sir.

Q. And they were in effect in '52?

A. Yes, sir. This white one?

Q. Yes, sir.

A. Yes, sir.

Mr. Klein: I would like to offer Exhibit 44 and Exhibit 44-A in evidence.

Mr. Dexter: I object to both exhibits as being immaterial, and I particularly refer to—call the Court's attention to Exhibit 44, which was not the by-laws in existence—they were prior; they are not after '52. They are prior to '52.

Mr. Klein: Yes, sir.

The Court: You don't object because they are (329) printed copies?

Mr. Dexter: No.

The Court: They may be received.

Q. (By Mr. Klein): Do you have, sir, a published balance sheet of your association for the year 1952 and prior years? Certain prior years that we asked for?

(Published statements of financial condition of Citizen's Federal Savings and Loan Association were marked Plaintiff's Exhibit Nos. 45-A through 45-F by the reporter.)

Q. Now, Mr. Wright, in your capacity as executive vice president of the Citizen's Federal Savings and Loan, were you in general in control of the records and books of the corporation, among other things?

A. You might say indirectly. We have a bookkeeper and secretary.

Q. But you were ultimately responsible?

A. Yes, sir.

Q. And they carried on and kept the records pursuant to your direction?

A. Yes.

Q. And order?

A. Yes, sir.

Q. And you are generally familiar with the books and records of your association?

A. Yes.

(330) Q. I show you Exhibits 45-A through 45-F, inclusive, and ask you if these are the published statements of the financial condition of the Citizen's Federal Savings and Loan Association of Port Huron for the period ending December 31, 1947, and for each year thereafter, up to and including December 31, 1952?

A. Yes, sir.

Q. And were these statements published in the newspaper pursuant to the requirements of the Federal statute under which your Association was incorporated?

A. Yes, sir.

Q. And did you also serve or file a copy of such statement with the Federal Home Loan Bank Board, is it?

A. Federal Home Loan Bank of Indianapolis.

Q. And that was also done pursuant to statute?

A. Yes, sir.

Q. And is this a true and correct record in each instance of the financial condition of the Association for the periods in question?

A. To the best of my knowledge.

Q. As appears from the books and records of your Association?

A. Yes, sir.

Q. And these statements as published and as filed were sworn to under oath by you as secretary, originally, and later as executive vice-president?

(331) A. Yes, sir.

Q. As appears on the face of them?

A. Yes, sir.

Q. And there is a statutory penalty for wilfully filing an erroneous or false statement?

A. Yes, sir.

Q. And would your books and records, sir, be available for the examination and inspection by the Attorney General for the State of Michigan in connection with this lawsuit to check the correctness of these statements, 45-A through 45-F, inclusive?

A. I believe so.

Q. They would be available for him?

A. Yes, sir.

Mr. Klein: I would like to offer Exhibits 45-A through 45-F, inclusive; and they are the same, I might say, as have been attached to the notice of intention which was served upon counsel for the defendant a long time ago.

Mr. Dexter: We would object to the admissibility of these statements for several reasons. Some of the statements do not relate to the period in question, that is, 1952. They are all hearsay, and not the best evidence of the facts purported to be proved by the introduction of such exhibits. And, they are otherwise immaterial and irrelevant in this (332) proceeding.

Mr. Klein: I would like to ask the witness a question.

Q. (By Mr. Klein, continuing): Were there reports made in the regular course of the business and in the regular course of the Association business; was it its duty and procedure to make such reports?

A. Yes, sir.

The Court: Have you asked of this witness—I want to be sure—the question which you asked with reference to some of the others, whether they truly reflect the condition of the books?

Mr. Klein: I thought I did, but I will again ask it.

Q. (By Mr. Klein, continuing): Do they truly and correctly reflect the entries and records on your books of your Association for the periods in question?

A. I think they do; I swore to it.

Q. You swore that they do, and you now swear that they do?

A. Yes, sir.

The Court: They may be received, although I think that I should say the same as I did this morning, that if the Attorney General wishes to inspect the books and indicates what books he wishes placed in evidence, we will make a trip to the office and have them marked in (333) evidence, the books from which these reports are made. Subject to that, they will be received.

Q. (By Mr. Klein, continuing): Mr. Wright, do you recall the capital of your association when it was originally organized?

A. Yes, sir.

Q. What was it, sir?

A. A little over \$10,500.

Q. And as of December 31, 1952, according to your statement, it had savings accounts of \$6,776,000?

A. Yes, sir.

Q. In addition to surplus, specific reserves and general reserves?

A. Yes, sir.

The Court: What was the year of your organization, Mr. Wright?

A. 1938.

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Q. (By Mr. Klein, continuing): And in what area do you generally operate your business, sir?

A. Oh, the area surrounding Port Huron.

Q. A general area of how many square miles would you say?

A. Oh, I don't know; we have only half the territory to the St. Clair River; I would say an area of approximately fifty miles up and around Port Huron.

(334) Q. And your capital is obtained generally by investors investing in your savings shares?

A. The capital—the money we work with is derived from our savings accounts, yes, sir.

Q. And your savings account investors get a certificate, do they not?

A. No; we have two classes; we have investment certificates and regular savings books.

Q. And do you have a copy of those?

A. I didn't bring them, no, sir.

Q. Well, do they generally—they are not creditors of the association, are they?

A. No, sir.

Q. And the Association does not agree to pay them any interest?

A. No, sir.

Q. And the Association does not take deposits?

A. No, sir.

Q. And investor and member shares, as you denominate it, takes the risk of gain or loss in the operation of the business, do they not?

A. Yes, sir.

Q. If the business is profitable, dividends are paid, and if it is more profitable greater dividends are paid?

A. I will say that dividends are paid, yes, sir.

Q. And if there was a loss, dividends might be curtailed, or (335) there might not be any, is that correct?

A. Yes, sir.

Q. Now, you advertise for savings investors from all classes, economic classes, do you not?

A. We make no distinction.

Q. In other words, the more money you can get, the better?

A. Well, that is—the more savings you get the more mortgage loans you can make.

Q. Right, and you do not put any limitation on your accounts, do you, the moneys you take, at least for 1952?

A. I think we would, to a certain extent.

Q. Well, in 1952 did you have any limitation?

A. I don't think that there was enough money—I don't think we had to at that time.

Q. Well, you didn't, in any event, have a limitation?

A. No, sir.

Q. And you knew many of your depositors personally?

A. A great many, yes, sir.

Q. And would you say there were a number from professional classes?

A. You mean like—

Q. (Interposing): Lawyers, doctors.

A. Doctors and business men.

Q. Business men. Did business firms invest in shares?

A. At the moment I cannot recall any; possibly so.

(336) Q. Various estates, executors, trustees?

A. I don't believe we have any executors or trustees.

Q. Charitable organizations?

A. Well, like what?

Q. Any charitable organization that had money to invest—universities?

A. No.

Q. Hospitals?

A. No.

Q. Organizations of any kind?

A. We do not have any of those.

Q. You had business men who invested?

A. Some, yes, sir.

Q. People who owned their own businesses?

A. Yes, sir.

Q. And of all economic and income class levels?

A. Yes, sir.

Q. No person had to be a member before becoming an investor?

A. No, sir.

Q. And he became a member when he became an investor, shareholder?

A. Yes, sir.

Q. And what were the rights of an investor?

A. They had the right to attend annual meetings and vote for directors.

(337) Q. Was there any limitation on his voting right?

A. Yes, sir.

Q. What was the limitation?

A. Fifty votes.

Q. Did the investor have any obligation entailed with his becoming a member?

A. No, sir.

Q. Do you know how many members you had in 1952, investors—investments, I mean?

A. No, I don't know; unless it was just shown on the report.

Q. Was it in the thousands?

A. I think so.

Q. You do think so?

A. Yes, sir.

(338) Q. (By Mr. Klein, continuing): Investors in shares, you call member share accounts, do you not?

A. Yes, sir.

Q. And what terminology should I use?

A. Talk to me in plain English, say "savings accounts."

Q. But they are not creditors of your Association?

A. No, sir.

Q. They are shareholders, are they not?

A. That is right; that is the terminology that is used there, yes, sir.

Q. In fact, they may not be depositors or creditors?

A. Not depositors.

Q. They must be shareholders under the law, isn't that correct, sir?

A. Their accounts are called "share accounts."

(339) Q. Yes, sir.

A. But—

Q. (Interposing): So, as I understand it, did your Association in 1952 advertise extensively for share accounts?

A. We used the term "savings accounts."

Q. Well, all right, savings accounts.

A. We advertise for savings accounts, yes, sir.

Q. Do you have any of that advertising with you, that form of advertising?

A. No, sir.

Q. We had asked you to bring it in our subpoena?

• • • Well, I will show you an advertisement of the Citizen's Federal Savings, and ask you if that was the kind that was published in 1952?

A. Yes, sir.

Q. And at that time you were paying two and one-half per cent dividends?

A. Yes, sir.

Q. What dividends do you pay at the present time?

A. December 31st last we paid three and one-half per cent.

(340) Mr. Dexter: What period of time is that related to?

A. That was 1952.

The Court: There were two questions. The one he said at the time this ad was two and one-half, but on December 31st last it was three and one-half.

Mr. Dexter: Well, I would object to that question and ask that the answer be stricken, your Honor, as being subsequent to the period in question.

The Court: I think anything after 1952 should be, unless there is some special reason for changing the ruling, should be put on your special record.

Mr. Klein: All right, I would like that on the special record; there won't be many.

The Court: It will be everything since 1952, unless you bring it to my attention for a special ruling—will go on the special record rather than the general record.

Mr. Klein: Right, sir; I do not think there will be many of them.

(A newspaper advertisement was thereupon marked for identification by the Reporter as Plaintiff's Exhibit No. 46.)

Q. (By Mr. Klein, continuing): Exhibit 46 is an advertisement of the Citizen's Savings, is it not, I think you testified?

(341) A. Yes, sir.

Q. Used in 1952?

A. I wouldn't say—somebody has marked "12/16/52," but I will say that is similar to advertising we were using at that time.

Q. And these are advertisements for, as you say, savings accounts?

A. Yes, sir.

Q. Mr. Klein: I should like to offer Exhibit 46 in evidence.

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(342) The Court: It is a newspaper ad. Is there any question about it?

Mr. Klein: He said, "Yes." And, was this published in the Port Huron newspaper?

A. Yes, sir.

Q. And did your Association publish similar ads in 1952, seeking savings accounts or shares?

A. Yes, sir.

Q. You endeavored to get as many and as large a savings account as you could?

A. Yes, sir, that was our business.

Q. That was your business.

Mr. Klein: I should like to offer Exhibit 46 in evidence.

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(343) Mr. Dexter: For what purpose is it offered, Mr. Klein?

Mr. Klein: To show the nature and character of this Association, the nature of its business, the source from which it got its money capital, which it then, in turn, used, we contend, in competition with the business of plaintiff bank.

Mr. Dexter: I do not believe, your Honor, that it is admissible for that purpose at all. I think it is admissible to show, maybe, there was an ad.

The Court: It may be received.

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(344) Q. (By Mr. Klein): From Exhibit 46, it appears that you had 10,000 share accounts or share investors; is that correct?

A. 10,000. We had 10,000 savings customers.

Q. At that time?

A. Yes, sir.

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Q. (By Mr. Klein): Do you know that of your own knowledge, sir; whether your association had 10,000 or more savings customers or accounts?

A. I would say this: That if they appeared in our ad, we had.

Q. And as Executive Vice-President, would you know?

A. Yes, sir.

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(345) Q. (By Mr. Klein): I show you Exhibit 46-A to 46-F, inclusive, and ask you if these are advertisements of the character which your association published in the Port Huron newspaper in the year 1952?

(346) A. I won't say '52, but I will say that we did publish advertisements of like nature.

Q. In '52?

A. I won't say in '52, but I would say that during our period of business, we have used such ads.

Q. When did you change your interest rates, sir, or your dividend rates?

A. June, 1957.

Q. Would you recall whether any of these or ads of this character appeared in 1952 or prior?

A. I can't identify the date. There is nothing in the printed matter to aid me in answering that.

Q. Well, could you check these exhibits against your records and advise whether or not this is the type of advertising used in '52 in some way?

A. I think I could if I had the entire sheet of the newspaper with the date on it.

Q. We only have the dates marked in as we have them. They are all marked '52, but that is up to you. You put them in; I didn't.

Well, it was not necessary for an investor in shares or a savings account holder to become a borrower?

A. No, sir.

Q. And it was not necessary, was it, for a borrower on a mortgage to become an investor in shares?

(347) A. No, sir.

Q. How did you employ the capital you obtained in your business?

A. By making real estate mortgage loans, purchasing capital in the Federal Home Loan Bank, and buying Government bonds.

Q. And what types of mortgages did you make, sir, in 1952?

A. On residential properties.

Q. Did you make FHA mortgages?

A. I believe so. We make FHA mortgages.

Q. And did you make Veterans mortgages, guaranteed Veterans mortgages, in '52?

A. We have entered into the program since its inception.

Q. And you then in '52 did?

A. I imagine so.

Q. And you also made conventional mortgages?

A. Yes, sir.

Q. And when a person sought a mortgage loan, did he have to be a member before he filed an application?

A. No, sir.

Q. You advertised through various means for people to loan money to, did you not? You put ads in telling them that you were loaning money on mortgages?

A. Yes, sir.

Q. And did you loan people of all economic class levels and income class levels?

A. To people that desired mortgages for home ownership, yes, sir.

(348) Q. And it didn't make any difference; you appealed to all class levels for the loans?

A. Yes.

Q. And what was the average amount of loans you made? What was the average mortgage amount in '52, if you recall?

A. I wouldn't know precisely. I would say probably from three to five, six thousand dollars.

Q. Did you make loans of \$20,000?

A. No, not at that time.

Q. None?

A. Not at that time, I'm sure.

Q. \$15,000?

A. I doubt it.

Q. Did you loan on any commercial property at all?

A. No, sir.

Q. In '52?

A. No, sir.

Q. Did you before that?

A. No, sir.

Q. And when a person made a mortgage application—do you have a form of application here with you?

A. No, I do not.

Q. You do not. Did you seek from him his financial net worth?

A. Yes, sir.

Q. Did you in the application ascertain what his income was?

(349) A. Yes, sir.

Q. And did you also provide for a place for the appraisal of the property which he was to subject to the mortgage?

A. We had appraisals made, yes, sir.

Q. You had appraisals made?

A. Yes, sir.

Q. And in determining on what the basis of the loan was, what did your association do as a matter of practice in '52? What did you base your granting or rejecting a loan upon?

A. The credit of the individual and the appraisal report.

Q. And was there any—

A. (Interposing) Information in the application.

Q. Do you know what policy your association followed in appraisal value in relation to the amount of loan granted—the minimum and the maximum, and your policy in '52?

A. Let us say there was no minimum, and the maximum—you mean percentagewise?

Q. Yes.

A. Probably 70 to 75 per cent.

Q. What was the average amount, though, would you say?

A. Perhaps about 60-something.

Q. About 60 percent. In other words, the mortgage would be about 60 per cent of the appraised value?

A. I imagine about that.

Q. And these loans were amortized over a period of years monthly?

(350) A. Yes, sir.

Q. And what was the average duration of the mortgage—average, I am saying?

A. I couldn't tell you. The policy was around at that time about maximum of about twelve years.

Q. The maximum—that was your policy?

A. Yes.

Q. And what was the average, would you say?

A. Somewhere in that neighborhood. It depended on the size of the loan.

Q. And it was amortized in equal monthly installments?

A. Yes, sir.

Q. And do you know from your experience in the business what other types of institutions were out loaning money secured by home mortgages in competition with your business in and around Port Huron?

A. Yes, sir.

Q. What types of institutions?

A. Banks, life insurance companies, credit unions—at least those three.

Q. You know that the Michigan National Bank was out seeking mortgages secured by residential mortgages?

A. Yes, sir.

Q. And you and they sought mortgages on property in the same localities, did you not?

(351) A. I believe we used about the same territory.

Q. About the same territory. And you sought mortgages from the same general class of borrowers, did you not?

A. I imagine so.

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Q. (By Mr. Klein): You have been in the savings and loan business how long, Mr. Wright?

A. Twenty years.

Q. And as a good businessman, I assume you are careful to ascertain who your competition is in getting business, aren't you?

Mr. Dexter: Your Honor, still we don't have this word "competition" defined, and that is one of the legal conclusions that this lawsuit is directed toward, and without any definition of it, I believe that the question is ambiguous for the purposes of this lawsuit.

Mr. Klein: I will reframe it.

(352) The Court: Well, the witness doesn't seem to have any trouble, but maybe you and I are, so maybe it is just as well to understand what he understands by it.

Q. (By Mr. Klein): What do you understand by my question when I ask if you made it your business in '52 to know who your competition was in seeking people who were going to borrow money from you or other institutions secured by home mortgages?

A. You want to know if I know who were making mortgages in my territory?

Q. That were secured by residences—mortgages on residences, yes sir.

A. Well, I can't answer that when you say "secured by residences," because I wouldn't know. If a mort-

gage was filed in the Register of Deeds' office, I wouldn't know whether it was on a residence or a farm or commercial property.

Q. But you knew, I think you just testified, that the Michigan National Bank sought the same lenders in the same neighborhood as you did, your company did; is that correct, sir?

A. I will answer that this way: We were both operating in the same territory. We were both making real estate mortgages.

Q. And you know they were making real estate mortgage loans on residential properties, do you not?

A. I know they do sometimes, because sometimes they pick up one of my mortgages that was on a residence.

(353) Q. And sometimes your association refinanced a mortgage which they had. That happened, too, did it?

A. Yes, sir.

Q. It worked both ways. That was in 1952, wasn't it?

A. Yes, sir.

Q. Now, in 1952, according to your balance sheet for December 31, 1952, Exhibit 45-F, you had first mortgage loans on hand with balances of \$6,360,000, did you not?

A. Yes, sir.

Q. And FHA improvement loans of \$103,000?

A. Yes, sir.

Q. And as against that, you had savings accounts of \$6,776,000?

A. Yes, sir.

Q. And a total capital and surplus account of \$7,800,000?

A. Yes, sir.

Q. And was that your main business, the mortgage business, making loans secured by mortgages in 1952?

A. Yes, sir.

Q. Did your association sell Traveler's Checks?

A. Yes, sir.

Q. And did you perform any other functions such as issuing United States Defense Bonds and redeeming them?

A. Yes, sir.

Q. Did you issue money orders in any amount?

A. We issued money orders, yes, sir.

(354) Q. Did you in 1952 have a Christmas Savings Plan?

A. Yes, sir.

Q. And an Add-O-Bank Plan for the children to save?

A. You know what that is?

Q. No, sir. A little bank?

A. That's right.

Q. And you sold Traveler's Checks?

A. Yes.

Q. I will show you what purports to be an ad, to refresh your memory, of the Citizens Federal, under a heading "Other Plan of Institution," and ask you what that might mean compared with the saving association?

A. Now, what is it you want me to answer about this?

Q. What did you mean, "Other Plan of Institution"?

Mr. Dexter: Your Honor, that particular piece of paper, I believe, is not identified as to time.

Mr. Klein: We will get it identified, sir.

(An advertisement of Citizens Federal Savings & Loan Association was marked Exhibit 46-G by the reporter.)

Q. (By Mr. Klein): I will show you what purports to be an advertisement of the Citizens Federal, marked

46-G, and ask you if an ad such as that was published in a Port Huron paper in 1952?

A. What is it you want me to answer?

Q. Was that ad or one like it published in the Port Huron paper in 1952?

(355) A. I imagine it was. Now, I won't say in 1952, but I will say this: That we have published ads similar to that. I won't say as to the particular time, because I have no way of identifying it.

Mr. Klein: I should like to offer Exhibit 46-G in evidence.

Mr. Dexter: I obviously object, Mr. Klein. . . .

Mr. Klein: May I ask the witness a question?

Q. (By Mr. Klein): Would you say there was an advertisement of this character published by your association in '52 or prior?

A. I would say that an ad similar to this has been published.

Q. In '52 or prior?

A. I don't know the date. I can't tell you that.

Q. And this marking of June 10, 1952 on there, does that refresh your memory in any way? Would that help you?

A. That isn't my writing.

Q. That is not your writing, sir?

A. No, sir. I couldn't answer that, because I don't know.

Q. You don't recall. Now, as I understand it, you appealed to any person in the community to make a loan from your association?

A. Our services are available to the community.

Q. The borrower, prior to making an application, did not have to be a member?

(357) A. No, sir.

Q. He didn't become a member until his application for a loan was approved?

A. Until the loan was made, yes, sir.

Q. And what rights and what obligations did becoming a member then entail?

A. It entitles him to attend our annual meeting of the board of directors and vote.

Q. One vote?

A. One vote.

Q. And are there any liabilities entailed with his becoming a member?

A. No, sir.

Q. Does he have a payment to make to become a member?

A. Make the mortgage loan payments.

Q. In other words, he borrows the money and he has agreed to pay it back; is that correct, sir?

A. That is correct.

Q. Other than that, you appealed to everyone in 1952 to borrow money from you; isn't that correct?

A. Our services were available to the public in our territory.

Q. Now, to get back to the investment situation again, your association in 1952 had investors which were pension funds, did you not—pension funds, trustees of pension funds invested in your savings and loan shares?

A. I can't recall anyone. I couldn't say.

(358) Q. You had investors that were perpetual care funds, people or trustees for perpetual care funds?

A. Like what now?

Q. Any kind. Cemetery funds perpetual care.

A. I am not sure. I think possibly we might have had some cemetery funds.

Q. And you had investors who were trustees of legal trust funds, did you not?

A. We might have.

Q. Did you in '52?

A. I don't know. I can't answer that specifically.

Q. Did you have investors that were corporations?

A. I think possibly we did have.

Q. Did you have a number of corporations?

A. Not too many.

Q. Did you seek to get corporation accounts?

A. All savings accounts that came to us were accepted.

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Q. (By Mr. Klein): I will show you what purports to be a newspaper advertisement, which has been marked Plaintiff's Exhibit 46-H, and ask you whether an advertisement of that character was published in '52 or prior in the Port Huron newspaper?

A. That looks like an ad that we had published. I can't say as to the year 1952. I can't identify it as to time.

Q. Would you think it was in '52?

A. It might have been. It might not. I can't tell. I can't identify it as to time.

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Q. (By Mr. Klein): Looking at that exhibit, does that refresh your memory as to seeking savings accounts from pension fund trustees?

A. Yes, sir.

Q. And you did seek savings accounts from pension fund trustees?

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(363) Q. (By Mr. Klein, continuing)—in 1952?

A. We have, yes, because we always have.

Q. You have always done so?

A. Yes, sir.

Q. And you sought savings accounts from trustees of legal trust funds, did you not?

A. Yes, sir.

Q. And you sought savings accounts from corporation accounts, did you not?

A. Yes, sir.

Q. And you sought them from perpetual care fund accounts?

A. Yes, sir.

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Q. Now, Mr. Wright, I will show you a photograph which has been marked Plaintiff's Exhibit 47-A and ask you if you can see on there the location of the Citizen's Federal Savings and Loan Association building?

A. Well, I can identify Michigan National Bank in that picture.

Q. And where there is marked in ink can you identify the Citizen's Federal building?

(364) A. That is a part of our building.

Q. Part of your building to the left side of 47-A?

A. Yes, sir.

Q. And then 47-B is the entire front of your building; isn't it?

A. Yes, sir.

Q. And it is within four doors from the Michigan National Bank offices?

A. You have to cross the street. That is four doors. That is People's Bank Building, that is the Wright Hoyt Building, and this is the Citizen's Federal Building.

Q. And you have counters like banks inside of your bank building?

A. Yes, we do.

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(365) Mr. Klein: Your Honor, I don't know if I offered before these advertisements, Exhibits 46-A through 46-H, inclusive.

The Court: Well, if I remember the testimony correctly, the witness was not able to state whether they were prior to '52 or not, during or prior to '52, and unless there is an offer on your part to later produce—

Mr. Klein (interposing): I will endeavor to do so, sir, and if I do not, we will call it to your attention.

The Court: They may be received, subject to the date being established.

Mr. Klein: If we do not establish the date, why, then, as I understand it, the condition has not been met.

The Court: That is right.

Mr. Klein: And 46-A and B have been accepted in evidence, have they not? I meant to offer 47-A and 47-B, sir.

The Court: 47-A and B, I didn't hear you say anything about the dates. Has there been any change since '52 there?

A. No, sir.

(366) (A printed form for Application for Loan was marked Plaintiff's Exhibit No. 48 by the reporter.)

Q. (By Mr. Klein): I will show you a printed form marked Plaintiff's (367) Exhibit 48, having a heading, "Application for Loan, Citizen's Federal Savings and Loan Association," and ask if that is the application for loan form your association used in '52?

A. I can't identify it as to year. There is nothing on that to aid me in making a decision. I would say that we have used a form similar to that in the past.

Q. And you are of the opinion a form of this character was used in 1952?

A. It might have been. Again, there is nothing on here—I looked on here to see the date it was printed.

Q. You know in general the information you sought from applicants in '52, do you not?

A. Well, as I say, we have used a form similar to that in the past. We do not use it at the present time, but we have used—

Q. (Interposing): You think you used one like that in 1952?

A. I can't identify it as to year.

Q. Did you in 1952 make construction loans to builders?

A. Yes, sir.

Q. And do you have any notion as to the amount of those construction loans in 1952?

A. No, sir, I wouldn't know.

Q. Did you make loans for new buildings, buildings in the process of construction, in 1952?

A. That is the same as construction.

(368) Q. And then you made a loan on buildings already in existence?

A. Yes.

Q. And then you made loans for refinancing where a man had a loan from another company?

A. Yes.

Q. And I think you testified you refinanced some of the Michigan National Bank where they had mortgages?

A. And refinanced some of ours.

Q. And they refinanced some of yours?

A. Yes, sir.

Q. In 1952. And these construction loans I am talking about were to builders themselves in '52 in many instances, people who were in the business of building houses?

A. Yes, sir.

Q. And did you make loans where you knew the money was to be used for other purposes than construction of homes?

A. Not that I know of.

Q. Where the funds were used for private purposes so long as you had the security of the mortgage?

A. Not that I know of.

Q. To finance new automobile purchases, so long as you had a mortgage on the home?

A. I doubt that.

Q. Do you recall that in 1956 the aggregate amount of your mortgages outstanding were approximately \$1,600,000? In 1946, (369) I misspoke.

A. Is that on that statement?

Q. Well, the statement goes back to '47, I believe.

A. December 31, '47, I can answer that question.

Q. Yes, it was around 2 million dollars, wasn't it, a little over 2 million dollars?

A. Yes, sir.

Q. And at the end of December 31, '52, your mortgages were in excess of six million three and 103 thousand FHA mortgages?

A. Yes, sir.

Q. And your share accounts in 1947 were approximately \$2,300,000, and in 1952 they were in excess of \$6,700,000?

A. Yes, sir.

Q. Did your mortgage loans in 1952 include FHA Title 2 improvement loans?

A. Title 1.

Q. How about Title 2, sir?

A. Title 1.

Q. You had Title 1. Did your association pay any personal property taxes in 1952?

A. I can't answer that.

Q. You don't know?

A. No, sir.

Q. Can you ascertain whether you paid personal property taxes (370) by calling your office and getting a report before we adjourn?

A. Not this evening.

Q. Can't your bookkeeper tell you whether you paid any personal property taxes in 1952?

A. Not this afternoon.

Q. You can't tell from the books and records?

A. No, sir.

Q. When can you get that information, sir?

A. Tomorrow.

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(371)

Cross Examination

By Mr. Dexter:

Q. You realize on the cross-examination questions that I have to put to you, Mr. Wright, they relate to the calendar year 1952, unless otherwise plainly indicated.

Do you have any knowledge of any opposition on the part of the banks in your area at the time that your charter was granted?

(372) A. I had a suspicion there was.

Q. That is in 1938?

A. Yes, sir.

Q. Do you know what the nature of that opposition was?

A. Yes, in setting our operation, we had a form upon which we secured signatures of people who thought the establishing of a federal savings and loan association in Port Huron was a good idea, and they set down their names, and also they set down the amount that they wished to contribute toward the formation of such an organization. And several of those people came to me and said to me, "My gosh, Bert, I am sorry, but I would like to take my name off that paper I signed. I find that I just can't go through with it."

Q. Did they give any reason why?

A. Not specifically.

Q. You don't know as a fact, then, of any particular opposition by banks as such?

A. Just as I say, I had a slight suspicion there was some opposition.

Q. But you have no knowledge of any formal opposition at all at the time you were incorporated?

A. No, sir.

(373) Q. All right. Would you explain the capital structure, including the types of shares issued by your Association?

A. We have two accounts, they are both savings—they are all savings, we have two forms, for those who wish to place a lump sum with us, and on which they will have their dividends mailed to them; we have a certificate; and others, we have just a plain old-fashioned savings account book.

Q. May any of the shares be assigned?

A. The certificates and books may be; they both may be.

Q. They both may be assigned?

A. Yes, sir.

Q. May they be assigned without consent of the Association?

A. I think we have to give our consent to it.

Q. You have to give your consent before they can be transferred. May these shares be redeemed or purchased at the option of the Association?

A. They may.

Q. Have the stockholders and directors specially authorized by resolution, all types of business activities in which your Association engages?

A. The directors have full charge on those things.

Q. But they have authorized that?

*A. Yes, sir.

(374) Q. Describe the nature of each category of your assets and liabilities.

A. Cash on hand and in banks—

Q. Just the nature.

(375) A. That is money we had in banks; U. S. Government bonds; stock in Federal Home Loan Bank; first mortgage loans on savings accounts; FHA improvement loans; property sold on contract; real estate owned, office building and equipment; deferred charges and other assets.

Q. Is most of the cash you have on hand—I mean is most of your cash, the \$524,946.44, shown on Plaintiff's Exhibit 45-F, your balance sheet of December 31, 1952, on deposit in banks?

A. In banks; yes, sir—just a minute—cash on hand and in banks; well, that is just what it means; we have a working fund and the rest is in banks.

Q. Well, do you know what the size of that working fund was that was not on deposit in banks?

A. Yes, we have a working fund, a day by day working fund, at that time, of approximately \$30,000.

Q. And the rest of the \$524,946.44 was actually on deposit in banks?

A. Yes, sir.

Q. Do you know what banks they were on deposit in?

A. Michigan National Bank, Peoples Savings Bank, Federal Home Loan Bank of Indianapolis.

Q. What cash reserves and deposits are you required to keep?

A. I cannot answer that.

Q. You don't know what percentage it was?

A. No, sir.

(376) Q. Can you get that information for us?

A. Yes, sir.

Mr. Dexter: Would it be all right if that information is sent back with the personal property tax information, Mr. Klein, by Mr. Sullivan?

Mr. Klein: That is all right; I may want to examine him about it.

Mr. Sullivan: What did you say it was, the reserves?

Mr. Dexter: What cash reserve on deposit that they are required to keep?

Mr. Sullivan: The reserve requirement for 1952?

Mr. Dexter: That is right. Does that depend on statute or on regulation, or what does it depend on?

Mr. Sullivan: Regulation.

A. You mean the charter requirement of the reserves—that is five per cent in the first twenty years—

Q. (Interposing): Was there any other requirement of cash reserves?

A. No, sir.

Q. In other words, the rest of the reserves and deposits you could keep in a non-liquid form?

A. Yes, sir.

Q. But that is a matter of regulation?

A. Yes, sir.

(377) Q. So if there is any difference between what the regulation required in 1952, and your testimony, the regulation would control, is that right?

A. Yes, sir.

Q. Because cash reserves and deposits were kept according to the applicable regulations?

A. Yes, sir.

Q. Describe your sources of capital and borrowed money?

A. And borrowed money—we are permitted to borrow from the Federal Home Loan Bank, giving our mortgages as security, or our Government bonds.

Q. What other sources of capital and borrowed money do you have?

A. Well, of course we are privileged to borrow from banks or other sources if we felt the need of it.

Q. In 1952 did you have any borrowings from banks?

A. None, only the Federal Home Loan Bank, as shown on that statement.

Q. I see. But, in years prior to 1952 have you had occasion to borrow money from banks other than the—

A. (Interposing): We have never borrowed money from anyone except the Federal Home Loan Bank.

Q. I see. Do you maintain checking accounts for your depositors or customers?

A. No, sir.

(378) Q. Do your shareholders have the right under the by-laws to withdraw their money on demand?

A. They do—under our charter we can require thirty days' notice; that is a charter provision.

Q. They cannot get it on demand if you wanted to insist that they couldn't?

A. That is right.

Q. As I understand it, you keep the cash that you are required to have on hand for business needs primarily in banking institutions, with a minimum reserve on hand in your own institution?

A. Yes, sir.

Q. Do you keep it in regular bank commercial accounts, except that that you have on hand?

A. Yes, sir.

Q. Do you maintain any other kinds of deposits in commercial banks, or do any other sort of business with commercial banks?

A. That is all.

Q. Do you loan any money to any finance companies?

A. No, except on homes.

Q. Then all of your loans are secured by mortgages on residential property?

A. Yes, sir.

Q. Do you loan money secured by chattel mortgages on automobiles?

A. No, sir.

Q. Do you secure your loans by accepting shares of stock as (379) collateral?

A. No, sir.

Q. Bills of lading?

A. No, sir.

Q. Fungible goods?

A. No, sir.

Q. Assignments of accounts receivable?

A. No, sir.

Q. Do you make any unsecured loans on the strength of a borrower's financial statement?

A. No, sir.

Q. How large a percentage of the current market value of the security will you loan; this relates, of course, to 1952?

A. I think at that time, I think I answered that before, I think around—it was a policy we could loan up to perhaps seventy to seventy-five per cent.

Q. And what is the average interest rate of the loans which you make?

A. It varies from five to six per cent.

Q. I am relating this, of course, to the year 1952?

A. Yes, sir; the same answer.

Q. Do you make any straight mortgage loans?

A. No, sir.

Q. Do you make any open-end type of loan?

A. Yes, sir.

(380) Q. What divisions are made in your mortgages concerning prepayment?

A. Twenty per cent—it may be up to twenty per cent per year.

Q. Do you consider them more or less liberal than pre-payment clauses used in bank mortgages?

A. I am not in a position to answer that.

Q. Do you sell or assign any of your mortgages?

A. Only—assign only as collateral to the Federal Home Loan Bank, and we are permitted to sell, to assume F. H. A.

Q. Once the mortgage and the mortgage note are signed, how are the funds then made available to the borrower?

A. They may be disbursed directly to him, to the—in a construction loan, to me or the supplier.

Q. I am thinking of the source of the money that you draw on to give the money to the borrower?

A. Well, let me say that, as an illustration, John Jones makes a real estate mortgage today, if it is just an ordinary straight loan, no entanglements, we probably would issue a check on the bank in which we keep those particular funds, and that would be the Michigan National Bank, write him a check for the amount due him, or the amount that he would request at that time.

Q. In other words, in 1952, for this particular purpose, that is, to get money to loan to the borrower, you would draw a check on the Michigan National Bank?

(381) A. That is it, and I will explain that this way: We divide our funds up for different purposes between the banks, and the ones we use to pay on the mortgage are deposited in the Michigan National Bank.

Q. So you would actually draw a check on the Michigan National Bank?

A. Yes, sir.

Q. To give the borrower the money he had borrowed?

A. Yes, sir.

Q. Do you charge the full rate permitted for servicing of Veterans Administration and FHA mortgages?

A. The full service fee allowed, is that the question?

Q. Yes.

A. Currently, or in the past?

Q. In 1952.

A. Well, in 1952, I think at that time we did.

Q. Did you before that date?

A. Well, I cannot tell—I cannot identify dates, but there was a time when there was nothing—no charge permitted, just you made them a loan.

Q. But you have charged the full rate permitted?

A. Yes, sir.

Q. Now, stressing the fact that we are discussing the calendar year 1952, what was the situation of the mortgage money market in that year?

(382) A. 1952, I think there were—I think probably we had to borrow some money from the Federal Home Loan Bank to carry on our mortgage business at that time.

Q. In other words, there was an excess demand for mortgage money over what you could supply?

A. Yes, sir.

Q. Did the demand for mortgage money—money on homes, as I understand, is the only security you loan on—exceed that which could be supplied by your Association, other building and loan associations, and the banks, in the area in which you operated in 1952?

A. Yes, the demand exceeded the supply.

Q. All right. Would you describe the nature and extent of governmental supervision and the governmental agencies supervised in your association?

A. We are examined at least annually by Examiners through the supervisory department of the Federal Home Loan Bank Board.

Q. What is the nature of that supervision; can you describe it?

A. Yes, sir. They come right in and they take over until they get through; they examine all our books and records; count our cash, and have charge of all our records until they get through.

Q. Are you a member of the Federal Reserve System?

A. No, sir.

(383) Q. And the Federal Deposit Insurance Corporation?

A. No, sir.

Q. Are you permitted to borrow from the Federal Reserve System?

A. No, sir—well, inasmuch as this, that—you mean a member of the Federal Reserve System?

Q. But you are not able to borrow from the System such?

A. No; borrow from a member of that, like—

Q. (Interposing): A local bank?

A. A local bank.

Q. But you are not able to borrow from the System like a national bank, for example?

A. No, sir.

Q. Are you a member of the Federal Home Loan Bank of Indianapolis?

A. Yes, sir.

Q. What agency of the Government, if any, insures your stockholders?

A. Federal Loan Insurance Corporation.

A. What provision, as a procedure, is made in your by-laws for paying off investors in the event of an emergency or insolvency?

A. Well, we can ask for—put it on a thirty-day basis and pay in rotation.

Q. In other words, put all the shareholders or accounts on a rotating basis on the first-in-first-out rule, on a thirty-day basis?

(384) A. Yes.

Q. What is the relationship between this procedure and the insurance furnished by the Federal Savings and Loan Insurance Corporation?

A. At the present time, in case of difficulty the Federal Savings Loan Insurance Corporation has gone in and taken over and paid off the savings customers.

Q. Are they required to prior to liquidation?

A. They always have so far.

Q. But they are not required to?

A. No, sir.

Q. In other words, the way that they would pay off would be eventually liquidate the assets, and then pick up the balance, is that right?

A. Yes, sir.

Q. Would you describe generally the principal place of operation of your business?

A. 511 Water Street, Port Huron, Michigan.

Q. Is it in an impressive building of any kind?

A. Well, it is a rather good-looking building.

Q. Do you have any branches of any kind?

A. No, sir.

Q. Do you operate completely from that one location?

A. Yes, sir.

(385) Q. How many employees do you have?

A. I would say about thirty-five.

Q. Is your bad debt reserve for Federal tax purposes computed in the same manner as banks?

A. I don't know.

Q. You have no knowledge of that?

A. No, sir.

Q. What was the market value of your shares in 1952?

A. One hundred cents on the dollar.

Q. Was it worth any more or any less?

A. Well, the reserve that we had set up was set up for their benefit.

Q. As a practical matter, the shares are worth their face amount?

A. Yes, sir.

(386) Q. What was the percentage thereof of all taxes paid by your association and its shareholders to the City of Port Huron and the State of Michigan?

A. Now, you are asking me a specific year?

Q. (By Mr. Dexter): 1952.

(387) A. I can't answer that.

Q. Could you get the answer?

A. Yes, sir.

(388) Q. (By Mr. Dexter): Mr. Wright, do you have the information in your file as to all the taxes that you have paid during the year 1952?

A. In dollars?

Q. Yes.

A. No.

Q. In dollars, the kinds of taxes and what they were and the amounts?

A. You are asking for real estate taxes?

Q. Your total taxes, whatever they are. I am not trying to characterize them for you.

Q. (By Mr. Dexter): Do you have those amounts?

A. Not with me.

Q. Well, I mean do you have them in your record?

A. Oh, yes.

Q. And can you make those available?

A. Yes, sir.

(394) Q. Turning to the balance sheet here of 1952, now, the items in mortgages and loans do not indicate the amount of mortgages and loans made in the year 1952; is that right?

A. That's right.

Q. That is a total?

A. Yes, sir.

Q. But there is nothing on the balance sheet to indicate what loans you made in 1952?

A. No, sir.

Q. Now, in 1952 did you have commitments for loans that would be reflected on your balance sheet that were not actually made—that is, the money actually disbursed?

A. We would have—you mean applications?

(395) Q. Well, actual commitments, yes.

A. We always have a carry-over of those.

Q. And how were those reflected?

A. We are doing that—we do not carry it as a liability, because it isn't made and it might be cancelled out.

Q. How do you handle committed loans where you have actually told the borrower or approved the loan but the money has not actually been paid out?

A. At that time we weren't doing anything about it in 1952. We were operating very close, and it wasn't necessary at that time.

Q. Did you pay an intangibles tax on the deposits in the commercial banks?

A. Did we pay the tax on the money we had in commercial banks? We paid the intangibles tax on the accounts our savings customers had with us. Is that the question?

Q. Well, you paid the tax on these; is that right?

A. Yes, sir.

Q. (By Mr. Dexter): Did you pay the intangibles tax on your (396) depositors' or your share accounts yourself?

A. Yes, sir.

Q. Did you pay any intangibles tax on your commercial accounts with the banks?

A. I can't answer that.

Q. You don't know whether you did or not?

A. No.

Re-direct Examination

By Mr. Klein:

Q. Mr. Wright, as I understood your testimony on direct examination, you testified that your association in 1952 and before solicited savings accounts from all people in unlimited amounts. Is that correct?

A. No.

Q. You didn't say that?

A. If I did, I didn't intend to.

Q. You did seek as many accounts as you could get, didn't you, in (397) '52?

A. In numbers?

Q. In numbers to start with.

A. Yes.

Q. And there was no requirement as to who the depositor, savings depositor, could be?

A. No.

Q. No consent had to be obtained to taking a deposit at the outset?

A. Only this—I don't want you to misunderstand me: That in the question you said about anybody and any amount.

I don't know as we had occasion to decline anyone who offered any extraordinary amount, because we don't get big business, but I do think that—I know we would have placed a limit on an extraordinary large account.

(398) Q. What do you mean by an extraordinarily large account?

A. Oh, say \$100,000, \$50,000.

Q. But you took accounts up to that?

A. If we accepted a \$50,000 account, we would have to give it serious consideration before we did something.

Q. Why would you have to give it consideration?

A. I learned from experience that it is hard to meet up with those accounts when they want to take their money out.

Q. But you did take accounts up to \$50,000?

A. I don't believe we ever did.

Q. You mentioned the figure; that is why I picked it.

A. I said if anyone wanted to open an account up to \$50,000, we would have to give it serious consideration.

Q. But you did have substantial accounts, though?

A. No, our accounts are rather small.

Q. You had accounts over \$10,000, didn't you, in amount?

A. That isn't a large amount these days.

Q. \$20,000 in '52?

A. Oh, no, I don't think so.

Q. Could you produce that information, sir, the size of your accounts in '52, the maximum size of your account?

What I was getting at, sir, I am talking about this consent on the assignment of shares. What provision in your articles, by-laws or directors' resolutions required (399) consent to transfer a savings account? Can you point to any?

A. No.

Q. You cannot?

A. No, sir.

Q. You don't make any such requirement, do you, when a man comes to make a savings deposit? It isn't a matter of consent, is it? You take anyone who comes along, don't you, and take his deposit?

A. Yes, sir.

Q. Have you ever denied any transfer of a savings account to anyone who wanted to transfer?

A. No.

Q. You didn't in '52 or before?

A. No, sir.

Q. Now, on this withdrawal business, sir. In the event any savings account holder wanted to withdraw, there was a limitation to the amount he could withdraw?

A. That is charter provision.

Q. How much is he limited to?

A. Ten percent.

Q. And then does he take his turn?

A. Yes, sir.

Q. And even after he asks for withdrawal, he is not a creditor at any time, is he?

A. No, sir.

(400) Q. He is always a shareholder?

A. Yes, sir.

Q. Even though he asked to withdraw; isn't that correct, sir?

A. Yes, sir.

Q. Now, on liquidation, the shareholder is entitled not only to the face amount of his shares, but to any amount of assets in excess of that pro rata, isn't he? In the event your association were to liquidate in '52, the shareholder would have gotten not only the face amount of his shares but any amounts in excess of the value of his shares on a pro rata basis?

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A. He would be entitled to the amount in his account, plus earned dividends.

Q. And surplus and reserves?

A. I don't think that, in the case you mentioned.

Q. Who would get the reserves?

(401) A. There probably wouldn't be any.

Q. If there were any reserves, who would get them?

A. They belong to the shareholders.

Q. Pro rata?

A. Yes, sir.

Q. Did you make any mortgages in any counties other than St. Clair County in 1952 or before?

A. I don't know in particular, but we do make mortgages in St. Clair County and Macomb County and Sanilac County.

Q. Now, the more deposits you were able to get in '52, the more money you would have available for loaning on mortgages; isn't that correct?

A. That is correct.

Q. And you also could loan money in '52 on money you borrowed? You had the power to do that?

A. We had the power to borrow.

Q. And you did that?

A. I imagine we did.

Q. And competition for mortgages was pretty keen in '52, wasn't it?

Mr. Dexter: Your Honor, he has testified as to that, and he is using the word "competition" again, your Honor, which I think is not appropriate.

Q. (By Mr. Klein): You understand what I mean by the word "competition", don't you, people out lending money on (402) mortgages?

Mr. Dexter: Is that what you mean by competition, people out lending money on mortgages?

Mr. Klein: Different people in business in that area lending money secured on mortgages, in the Port Huron area.

Mr. Dexter: That is your definition of competition?

Mr. Klein: I have asked the witness a question.

The Court: You may answer.

A. It always has been.

Q. Was it in '52?

A. Yes, sir.

Q. Now, you talked about insurance for shareholders. Is there a limit to the amount of insurance they can get?

A. \$10,000 on each account.

Q. And if a man had more than ten thousand, that part was not insured?

A. If he had more than \$10,000 in one account, yes, sir.

Q. Do you know what rate of intangibles tax the association (403) paid on its shares in 1952 to the State of Michigan, talking about the rate?

A. No, sir, I do not.

Q. Do you know how many mortgages, new mortgages, you took in 1952?

A. Not in number, no, sir.

Q. In total amount?

A. No, sir.

Q. Would you say you took in excess of 600 mortgages in excess of 3 million dollars in amount in '52?

A. In excess of 600?

Q. Mortgages.

A. In 1952?

Q. In excess of 3 million dollars principal?

A. I would say that from the best of my knowledge we did not make 600 mortgages in '52.

Q. What is the best of your knowledge as to the approximate number of mortgages you made in '52?

A. Paid off there 400.

Q. And in what principal amount in the aggregate?

A. I couldn't tell.

Q. Would it be approximately 3 million dollars?

A. I just would have to guess.

Q. When can you get that information, sir? Amount of mortgages by type of mortgages and the principal amount; the number, (404) type and principal amount made in 1952?

A. I can answer that with the other.

Q. By type^a I mean FHA, veteran's loans, conventional mortgage.

A. You want them segregated?

Q. Yes, sir. Did you make such a report to the Federal Home Loan Bank Board, sir?

A. Yes, sir.

Q. Do you have a copy of that report with you?

A. For 1952?

Q. '52. Do you have a copy of the report for '52 with you, sir?

A. Yes, sir.

Q. That is for the year ended December 31, 1952?

A. Yes, sir.

Q. May I have it and have it marked as an exhibit, sir.

(405) (A copy of the Annual Report of Citizen's Federal Savings and Loan Association was marked Plaintiff's Exhibit No. by the reporter.)

Q. (By Mr. Klein): I will show you a document marked Plaintiff's Exhibit 49, consisting of 9 pages, and ask you if that is the annual report or a copy of the annual report of the Citizen's Federal Savings and Loan Association of Port Huron as at December 31, 1952, as filed with the Home Loan Bank Board and cooperating state department?

A. Yes, sir.

Q. And does that bear your signature any place?

A. I don't think so.

Q. It has the certification, does it not?

A. Of the secretary and president.

Q. Of your bank?

A. That is right.

Q. With its seal?

A. The seal of our association.

Q. And do you know whether this is a true and correct copy of the books and records as to the items there disclosed?

A. I am sure it is.

(406) Q. You are sure that it is, and on page 5 there is an analysis of the first mortgage loans made during the year, is there not?

A. Yes, sir.

Q. And there is a financial statement of assets and liabilities, capital gross operating income, reconciliation of undivided profits and surplus, reconciliation of re-

serves, first mortgage loans, analysis of first mortgage loans made during the year and total investor accounts and other items relating to the affairs of the association; is that correct, sir?

A. Yes, sir.

Mr. Klein: I would like to offer Plaintiff's Exhibit 49 in evidence.

The Court: What is the name of this bank that the report is made to?

A. Federal Home Loan Bank, Indianapolis, Indiana.

The Court: This is for the year ending what?

Mr. Klein: December 31, 1952.

Mr. Dexter: No objection, except the continuing one, as to materiality.

The Court: Received.

Q. (By Mr. Klein): Now, referring to Exhibit 49, Mr. Wright, to refresh your memory, you will see there were a total of 675 first mortgage loans made in 1952, were there not?

A. Yes, sir.

Q. And for the aggregate amount of \$2,700,000?

(407) A. Yes, sir.

Q. So when you said you thought there were less than 300, or 300 or thereabouts, you were in error?

A. I didn't think that we did that much business.

Q. In the first column it shows 173 construction loan mortgages in '52 for \$903,000; correct?

A. Yes, sir.

Q. And 190 first mortgage loans for the purchase of homes for \$1,073,000?

A. Yes, sir.

Q. And 39 refinancing loans for \$146,000, and 273 first mortgage loans in the aggregate amount of \$578,000 for other purposes; is that correct?

A. Yes, sir.

Q. What were the other purposes?

A. I couldn't tell you.

Q. You are chief executive officer of this bank; don't you have any notion as to other purposes?

A. Of this association.

Q. Of this association. Do you have any notion as to the purposes described as other purposes for which you loaned over a half a million dollars?

A. No, sir, I do not.

Q. You don't know, haven't the slightest idea?

A. I haven't.

(408) Q. Could you find out for us?

A. Sure.

Q. When can you find out, sir?

A. It might take some time to look through the records to find out.

Q. What has been your practice in '52 and prior to loan for other purposes? Have you any notion of any other purposes?

A. Nothing but having to do with home ownership. That would have to be the only other purpose. It couldn't be outside of that. It has something to do with home ownership.

Q. Isn't it possible that you made a loan secured by a home and the owner of the home used the money borrowed for some purposes other than buying, repairing or refinancing a home?

A. Our principal purpose is for the purpose of doing those very things.

Q. I am talking about other purposes.

A. I don't know. That is not broken down by me, and I don't know.

Q. Well, you haven't the slightest idea?

A. No, sir.

Q. Did you ever approve a loan for purposes other than construction, purchase of homes, refinancing?

A. I wouldn't know without looking at the records. I can't tell you.

Q. Well, we would like to find out, because we want to call on you to find out about that, sir.

(409) Now, according to this report, looking at Schedule 6, you had 56 depositors who had deposits of over \$10,000, didn't you?

A. Yes, sir.

Re-cross Examination

By Mr. Dexter:

Q. I want to clarify one point in your testimony, Mr. Wright. As I understand it, you stated that there was a greater demand for mortgage money than there was mortgage money for the year 1952.

A. I am not sure, but I believe that at that time we had to borrow money from Federal Home Loan Bank to take care of us.

Q. There was more demand for mortgage money than you had money to supply? In other words, it was a case of the market condition where people who wanted to borrow money for financing (410) homes were out trying to get institutions that had money available to loan on those homes?

A. Yes.

Q. That was the kind of market in '52 in Port Huron; is that correct?

A. Yes.

Q. Then you made a statement that could be misconstrued when you said that competition had always been keen in the mortgage business. Now, by that did

you mean that competition among people to get mortgage money has always been keen?

A. That is right.

Q. You were not referring to the competition between institutions trying to find people that wanted to borrow money?

A. No. Over a period of years, there have been, as I say, an excess of borrowers. The fact that we had to and did borrow money from the Federal Home Loan Bank to take care of the demand is proof of it.

It gets back to this, that in order to take care of the people in the community, we had to borrow money from the Federal Home Loan Bank to take care of the people who wanted to borrow money to take care of homes, to repair them.

Q. When you said competition was keen, you meant people trying to find money to borrow for their home mortgage purposes?

A. That is right.

Q. Because, I suppose, of the expanding nature of our time, the (411) development of new homes; is that correct?

A. That is right.

Re-direct Examination

By Mr. Klein:

Q. Did you borrow the maximum amount you could borrow from the Federal Home Loan Board?

A. No, sir.

Q. Did you get the maximum amount of savings accounts deposits you could get in '52?

A. I imagine we did.

Q. You tried to get as many as you could, and if the mortgage lending money was tight, why, the lender was

in a position to exact better terms for his mortgage and to be more conservative as to appraisal valuation, wouldn't he?

A. I don't just agree with that.

(415)

Wednesday, May 21, 1958,
Lansing, Michigan,
9:30 o'clock A.M.

(The hearing of this cause was resumed pursuant to the adjournment.)

SAWASKY, ANN M., was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

Q. Miss Sawasky, you are connected with the Michigan Corporation and Securities Commission?

A. I am.

Q. In what capacity?

A. Director in charge of the Michigan annual reports.

Q. And just what do your responsibilities in that position entail?

A. The maintaining of all records in connection with the filing of the Michigan annual reports and the payment of fees thereon.

Q. And if any annual reports required to be filed are not filed, is it the responsibility of your office to follow up with (416) those corporations and ascertain why they have not filed?

A. That is correct.

Q. And if any annual privilege fees required to be paid by any corporations are not paid, is it the duty of your office to attempt to enforce the collection of those annual privilege fees?

A. That is right.

Q. How long have you held that position with the Michigan Corporation and Securities Commission?

A. For twenty years.

Q. Were you with the Secretary of State's office prior to that time?

A. Yes, but not in that capacity.

Q. In 1952 was it the practice of your office to receive annual reports from savings and/or building and loan associations?

A. No, sir.

Q. Was it the practice in 1952 to collect any fees from savings and/or building and loan associations?

A. No, we did not.

Q. Was it the interpretation of your office, those responsible for administering your duties, under Section 4, which provides for a payment of a four-mill privilege fee, Section 4 of Act 85 of the Public Acts of 1921 as amended, to require (417) building and/or savings and loan associations to pay any such four-mill fee?

A. As far as our Commission is concerned, it was the opinion that building and loan, savings and loan were not required to file Michigan annual reports or pay any privilege fees.

Q. To your commission?

A. That is correct.

Q. Did you interpret the law to require them to pay a four-mill fee?

A. We have an opinion to that effect.

Q. That they are required to pay?

A. That they are not required.

Q. Did your office at any time in practice or interpretation call upon any building and/or savings and loan associations to pay a four-mill annual privilege fee under Section 4 referred to in 1952, or at any time prior thereto?

A. We did not.

Mr. Klein: Thank you very much.

Cross-Examination

By Mr. Dexter:

Q. Miss Sawasky, did your office practice relate to the instructions you received from the Attorney General by an opinion dated June 15, 1953?

(418) A. That is the opinion I referred to, Mr. Dexter.

Mr. Dexter: I would like to have this marked as an exhibit.

Mr. Klein: If the Court please, the date of the opinion is subsequent to the 1952 period in question.

Mr. Dexter: It relates to the 1952 situation, your Honor.

Mr. Klein: I have no objection to it, in any event.

The Court: It may be marked.

(Thereupon an opinion of the Attorney General, dated June 15, 1953, was marked for identification by the Reporter as Exhibit No. 50.)

Mr. Dexter: I am just wondering, your Honor, whether we are going to number all the exhibits in consecutive order?

The Court: That is the practice in my circuit court. If you have a different practice, I will follow whatever you have here.

Miss Kohler: We have nothing set.

The Court: Let's follow it right along. The fact that you introduce it will be sufficient to indicate that you introduced it.

What is the date of that opinion, Mr. Dexter?

Mr. Dexter: June 15, 1953, Opinion No. 1662.

(419) Q. (By Mr. Dexter, continuing): I hand you, Miss Sawasky, Exhibit 50, and ask you if that is the opinion on which you or your Commission determined that you had no jurisdiction in reference to franchise privilege fee matters so far as savings and loan association matters are concerned?

A. May I elaborate a bit, Mr. Dexter?

Q. Yes.

A. During my tenure of office no building and loan association had ever filed or paid a privilege tax to the State. This opinion was brought about by the auditors of the State of Michigan who questioned whether or not we were properly interpreting the statute as concerns building and loan associations, so this merely confirmed what the office practice had always been.

Q. As related to the 1952 amendments also of Public Acts 1921, No. 85?

A. That is correct.

Q. By Act 83, Public Acts of 1952?

A. Yes.

Q. But this is the basis of your testimony that you have no jurisdiction?

A. That is correct.

Q. In reference to Savings and loan matters?

A. That is correct.

(420) Q. You also exercise no jurisdiction in reference to banks?

A. That is correct; we do not, state or national.

Q. As I understand it, this opinion related to your jurisdiction over those types of institutions?

A. That is correct.

Q. The savings and loan association institutions?

A. Yes.

(421) The Court: Very well. It will be received.

(422) ANDERSEN, CLAYTON C., was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

The Court: State your full name for the reporter, please.

A. Clayton C. Andersen.

Q. (By Mr. Klein): Mr. Andersen, you are an officer of the Marshall Savings & Loan Association?

A. Correct.

Q. What is your office, sir?

A. Secretary-treasurer and manager of the office.

Q. You are also a director?

A. That's right, sir.

Q. And how long have you held that position, sir—
I mean as secretary-treasurer?

A. Since 1947. I would say about August of '47.

Q. And were you employed by the Association before that time?

A. I was not.

Q. Could you tell us when the Association was incorporated, sir?

A. In 1920. The exact date—you want it from the charter?

Q. No, that's all right. And it was incorporated under the state law?

(423) A. That is correct.

Q. That is, the Building and Savings and Loan Association statute of Michigan?

A. That's right.

Q. And do you recall what its total assets were in 1920 when you started?

A. The total assets in 1920, it was \$12,203.32 at December 31, 1920. That would be the first year.

Q. And on December 31, 1930, how much were they, approximately?

A. \$243,726.26.

Q. And as of June 30, 1952?

A. \$659,922.98.

The Court: What was that—that was '52, was it, Mr. Klein?

Mr. Klein: June 30, 1952, it was \$659,922.98.

(A pamphlet containing the by-laws of the Marshall Savings & Loan Association was marked Exhibit 51 by the Reporter.)

Q. (By Mr. Klein): I will show you a gray pamphlet marked Exhibit 51 and ask you whether that is a true and correct copy of the by-laws of your Association which were in effect in the year 1952?

A. That is correct.

Q. And does it also contain a passbook?

(424) A. This does not. That is the by-laws.

Q. This is just the by-laws?

Mr. Klein: I should like to offer Exhibit 51 in evidence.

Mr. Dexter: No objection, except our continuing objection to materiality.

Q. (By Mr. Klein): As secretary and treasurer and general manager, were you in general charge of the office?

A. In 1952?

Q. Yes.

A. If that is the year, yes, sir.

Q. Were you responsible at least for the executive administration of the affairs of the Association?

A. Of the office, yes, sir.

Q. And the keeping of the books and records were under your supervision and direction, were they not?

A. That is correct.

Q. And the negotiating of mortgages?

A. That is correct.

(An annual report for the year June 30, 1953, was marked Exhibit No. 37-H-1 by the reporter.)

Q. (By Mr. Klein): I will show you two documents which are marked Exhibit 37-H, purporting to be the Annual Report (425) of your Association for the fiscal year ended June 30, 1952, and the second one marked Exhibit 37-H-1, being an Annual Report of the Association for the year June 30, 1953, as filed with the Secretary of State, Department of State, Building and Loan Division, and ask you if these documents bear your signature?

A. That is mine, yes, sir.

Q. In each case?

A. That is correct.

Q. And were these reports I have described made in the regular course of business of the Association, and was it in the regular course of such business of the Association to make such reports at the time they were signed and filed?

A. That is correct.

Q. Do each of these reports truly and correctly reflect the entries contained in the books and records of the Association for the period in question?

A. To the best of my knowledge, right, sir.

Q. And if counsel for the Department of Revenue, the Attorney General's office, or the Secretary of State of Michigan, wish to inspect and examine your books and records to ascertain the correctness of your sworn report, will you be willing to have them do so at their reasonable convenience?

A. That is right, sir.

Q. The books are open to their inspection and check of your sworn (426) report?

A. That is right, sir.

Q. You did make these reports under oath, did you not?

A. That is correct.

Q. I show you an exhibit that has been marked Exhibit 36-G, under the heading of "Building and Loan Division, Michigan Department of State, Monthly Report, Marshall Savings & Loan Association, December 31, 1952;" does that bear your signature?

A. That is right.

Q. And was that prepared in the regular course of business and filed in the regular course of business?

A. That is right.

Q. And does that report truly and correctly reflect the entries and records that are contained in your books of the Association for the period in question?

A. The period of December, yes, sir.

Q. The period of December 31, 1952?

A. That is correct.

Q. And it also indicates the transactions that took place during the month in respect to mortgages, does it not?

A. That is right.

Q. And your books are also open for inspection in that respect?

A. That is right.

Q. Yes. Now, I see as of December 31, 1952, according to (427) Exhibit 36-G, you had \$612,913.72 of shareholders' investment?

A. That is right, total.

Q. Total?

A. That is right.

Q. And that is broken up partly in optional savings shares?

A. That is correct.

Q. And partly in fully paid shares?

A. Right.

Q. That is correct?

A. That is right, sir.

Q. Now, is that the way your association obtains its capital?

A. Through those investments and optional savings fully paid, yes, sir.

Q. Did you advertise for investors to invest money with your Association?

A. We advertised, yes, sir.

Q. And a shareholder is not a depositor?

A. No, he is a shareholder, that is correct.

Q. And your association does not agree to pay him interest of any kind?

A. Just dividends.

Q. If you make money?

A. If we make money.

Q. And if you lose money, the shareholder loses his pro rata (428) share?

A. I assume that would be correct, sir.

Q. In other words, he is a shareholder in your corporation?

A. That is correct.

Q. The shareholder is not a creditor of your corporation, is he?

A. No.

Q. And even if he elects to withdraw, make a withdrawal—

A. (Interposing): He may.

Q. —he is not a creditor at any time while there is any amount outstanding; he is always a shareholder?

A. That is right.

Q. Is that correct, sir?

A. That is the way I understand it.

Q. Yes, sir. So he takes the risk of profit or the risk of loss?

A. That is correct.

Q. Do you advertise for shareholders extensively, sir?

A. No, I wouldn't say we have an extensive program of advertising.

Q. Well, do you advertise in the newspapers?

A. Once a month, sir.

Mr. Dexter: Your Honor, I don't know whether these questions are directed to 1952 or not.

Mr. Klein: For the year 1952.

A. Not in 1952, we did not, sir.

Q. (By Mr. Klein, continuing): How did you endeavor to get (429) shareholders?

A. We had our own mailing in 1952.

Q. You had a mailing list?

A. Well, we mailed it.

Q. You didn't have newspaper advertising, but you had direct mail advertising?

A. Yes.

Q. Do you have any of that advertising material with you?

A. I have not, not for 1952.

Q. Do you have it for prior years with you?

A. No—

Q. (Interposing): All right, that is O. K. I do not think we have discussed how large a community is Marshall, sir?

A. Six thousand, in round numbers.

Q. Six thousand in round numbers; and you operate pretty much within the community of Marshall?

A. That is very true, yes, sir.

Q. You endeavor, do you not, to get as many shareholders as you could?

A. Right.

Q. And the more shareholders' money you had, the more money would be available to you for loaning on mortgages and any other operations you might have had?

A. Right.

(430) Q. Now, I see, according to your report for the period ended December 31, 1952, referring to Exhibit 36-G, that there were outstanding as at that period 221 direct reduction first mortgage loans—

A. (Interposing): 201, sir.

Q. 201—I misspoke—201, in the aggregate amount of \$639,552.73?

A. That is correct.

Q. And your other assets consisted of investment in stock from the Federal Home Loan Board, other securities, cash on hand, office building, and so forth?

A. That's right.

Q. Now, this amount of mortgages I have referred to is the balance of all mortgages on hand as of that time, whether taken in 1952 or before?

A. That is the unpaid principal, sir.

Q. Now, according to Exhibit 37-II—well, before we get to that, for the period of June 30, 1952, you had 272 investors, did you not, shareholders?

A. That's right.

Q. No. You had 282 investors' accounts?

A. Oh, yes. 282 is the total.

Q. And they had the aggregate investment of \$572,000, in round figures?

(431) A. Yes, that's right.

Q. And for the period ended June 30, 1953, you had 335 investors, for an aggregate investment of some \$685,000 in round figures?

A. That's right, sir.

Q. What dividend rate did you pay in the year 1952?

A. Three per cent.

Q. And what do you pay at the present time?

A. Three and a quarter.

Mr. Dexter: I object to the last question, your Honor, and I think you have sustained those objections at prior hearings.

Mr. Klein: I ask that it be made a part of a special record, any period after 1952.

The Court: It may be made a part of a special record. Objection sustained.

Q. (By Mr. Klein): As far as seeking investors in shares, did you accept investments from anyone who came along to make investments?

A. All that we could accept legally, let's answer it that way.

Q. There was no qualification as to who might be an investor in 1952? In other words, anyone who came along and put the money in could become an investor, couldn't he?

A. Individually, yes.

Q. Yes. Now, did you appeal to investors or people to become (432) investors from all economic class levels?

A. Yes, sir.

Q. And all income class levels?

A. Yes, sir.

Q. In fact, the more money you could get, the better you liked it, didn't you?

A. Definitely.

Q. Did you put any limit on the amount a person could invest in shares?

A. That is right, sir.

Q. Did you?

A. Yes, sir.

Q. What was your limit?

A. Now, this is to the best of my knowledge. I think it was ten thousand, and we raised it to twenty thousand. I'm not certain as to what it was in '52.

Q. Now, when a person became an investor in shares, was he given a certificate of some kind or a passbook with a certificate in it?

A. That is right.

Q. Do you have a form of such certificate with you?

A. As issued in '52, I assume?

Q. As issued in '52.

A. That is the fully paid (handing document to Mr. Klein). I would like to have that returned, please, if I could, (433) because we obtained it since then, and we have destroyed all the stuff, and I have to have that one because it was a cancelled one.

Mr. Klein: Mark this an exhibit, please.

(An application for stock and a certificate for stock was marked Exhibit 52 by the reporter.)

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Q. (By Mr. Klein): I show you Plaintiff's Exhibit 52 and ask you whether the small paper on top is the application for stock?

A. That is right, sir.

Q. And that the larger certificate is the certificate for the number of shares of stock?

A. That is right.

Q. And these were the forms used in effect by your Association in 1952?

A. That is right, sir.

Mr. Klein: I would like to offer Exhibit 52 into evidence.

Mr. Dexter: No objection, except the continuing one.

The Court: Received.

Q. (By Mr. Klein): Now, I see on Exhibit 52 that the certificates (434) will not be transferred unless and until the transferee has made proper application for membership and has been accepted as a member of the undersigned. Has any such application for transfer ever been refused by your association?

A. Not to my knowledge.

Q. And has any person who has tendered funds and sought to become an investor ever been denied the right so to do?

A. Yes.

Q. Many instances?

A. No.

Q. One instance?

A. One anyway.

Q. Just one?

A. In my particular—

Q. (Interposing): And what was the reason for that?

A. He wanted optional savings investments, and he was a constant withdrawer and habitually drunk, and there was some question of ownership between him and his spouse; so I just rejected it.

Q. Looked as though you would get into some legal complications?

(435) A. Yes.

Q. But other than that, there is not a single instance that you know of where any person attempted to become an investor where he was denied the right to become an investor?

A. That is right, sir.

Q. And when a person becomes an investor, and I am talking about 1952 and prior, did you require him to become a member?

A. That is right.

Q. And what duties and liabilities were entailed by his becoming a member at that time, or what rights and liabilities, I should say?

A. His rights, he would be a member as owner of that particular share of the business, of the association.

Q. Was there any liability entailed?

A. No, not that I know of.

Q. None entailed at all. And was it required that any investor should become a borrower of the association? Was that a requirement of investment, that he become a borrower from the association?

A. No, sir.

Q. And was it a requirement of any borrower that he become an investor?

A. No, sir.

Q. In other words, a man could be an investor without being (436) a borrower, and conversely, he could be a borrower without being an investor in shares?

A. As I understand.

Q. That is correct. Once you get your capital by attempting or endeavoring to get as many people to invest in your association as you can, is it not true that the main purpose of your business is to make mortgage loans?

A. That is right.

Q. And in 1952 what type of mortgage loans did you make?

A. Real estate mortgage loans.

Q. Real estate mortgage loans. And did your advertise, tell people that you were seeking their mortgage loan business?

A. I am sorry, but I will have to state no, sir, we did not.

Q. You did not. You did have something in the telephone book about that, though, didn't you?

A. Oh, that is possibly so, but I was thinking of monthly publications. We did not advertise for mortgage loans.

Q. But you did go out and try to get mortgage loans?

A. No, they came to us. We were more interested in getting investors, sir.

Q. You also were interested in getting mortgage loans to invest your money in so that you could pay dividends, weren't you?

A. Yes.

(A photostatic copy of an advertisement was marked Plaintiff's Exhibit No. 53 by the reporter.)

(437) Q. In other words, unless you in turn loaned your money out, your investors would not earn any dividends, would they?

A. No, it was a question of identification of the business mainly.

Q. Well, you endeavored to get as much mortgage business as you could, did you not?

A. As much as our capital permitted.

Q. As much as your capital permitted?

A. Yes.

Q. And you were out trying to get more capital all the time, as you just said; that was what you were interested in, because the more capital you got, the more money you could loan out secured by mortgages?

A. That is correct.

Q. Now, I will show you a photostatic copy of what purports to be an advertisement in the Marshall telephone directory, marked Plaintiff's Exhibit 53, and ask you if in the year 1952 the Marshall Savings & Loan Association had an advertisement in that telephone book of that character?

A. That is wrong, sir.

Q. What is that?

A. This was since we were insured. This was for 1957 or '58.

Q. Did you have any in '52?

A. I do not know. I would have to check back, sir.

(438) Q. Generally you as manager of your association endeavored to make it known in the community that your association was interested in making mortgage loans? That was your business, wasn't it?

A. Yes.

Q. (By Mr. Klein, continuing): In seeking mortgage loan business in 1952, did your association seek mortgage loans from borrowers of all economic and income class levels?

Mr. Dexter: Your Honor, he has already answered (439) that question.

Mr. Klein: I do not think so, sir. I asked him about investors' shares, not about mortgages.

The Court: That is my memory, Mr. Dexter. The other questions did relate to investors.

A. I can answer that by saying there was no partiality shown to anyone who came in to interview regarding a loan.

Q. (By Mr. Klein, continuing): And in a community such as Marshall, you knew most of your borrowers personally, didn't you?

A. Definitely, sir.

Q. And would you say there were a number of professional people who were borrowers from your Association?

A. Not—there were some, sir.

Q. And some business people?

A. Some, sir.

Q. Were there any businesses themselves borrowed money?

A. No, sir—no, sir.

Q. Were there any finance companies or builders?

A. It is possible, sir, that there was.

Q. Some what?

A. Builders.

Q. People engaged in the building business?

A. That is right, sir.

Q. Now, to switch back for a minute to investors, did you have (440) as investors business people?

A. Yes, sir.

Q. And professional people?

A. Yes, sir.

Q. And corporations?

A. Not in 1952 that I recall, sir.

Q. You don't recall. Any trustees of estates?

A. That opened the account?

Q. Yes, sir.

A. No, sir.

Q. You don't recall any?

A. There was none that opened an account.

Q. Any funds of any kind, trustees of various funds, or charitable organizations?

A. There were funds—that the original shareholder had died, and the executor was—

Q. (Interposing): Continued?

A. Yes, that is right; and there were some charitable.

Q. Any city, state organizations invest?

A. City, state, there was—yes. Could I elaborate on that?

Q. Surely.

A. The only ones I can think of that were city would be city schools, and those were scholarship funds.

Q. Yes.

A. They were not funds of the taxpayers; they were funds.

(441) Q. (By Mr. Klein, continuing): Do you recall how many mortgages were obtained by your association in the year 1952?

A. The bookkeeper checked them the other night and she said 53.

Q. And would you say that the total amount of such mortgages aggregated in excess of \$218,000 for the year 1952 of new mortgages taken?

A. I can't say; I didn't total them.

Q. Would that be the approximately amount?

A. That would be an approximation, yes, but I cannot say definitely on it.

Q. And your reports, Exhibits 37-H and 37-H-1, show the amount of mortgages taken in each of those fiscal years, do they not?

A. I think it does.

(442) Q. Yes. And would you indicate the size of the mortgages you took in 1952; do you recall the maximum amount?

A. The maximum amount that we could make at any time was \$10,000, without a formal approval of the Board; that is, through my office.

Q. Then you could, with the approval of the Board, take mortgages of greater amount?

A. That is right.

Q. And there were such mortgages taken, were there not?

A. I cannot answer that, sir.

Q. You cannot say one way or the other?

A. No, sir.

Q. You just don't recall?

A. I would have to check.

Q. Yes, sir. Now, what types of mortgages did you take, Mr. Andersen?

A. All real estate, sir.

Q. All real estate. Did you take any FHA mortgages in 1952?

A. No; all conventional.

Q. All conventional; and did an applicant for a mortgage have to file an application form?

A. That is right, sir.

Q. Do you have a copy of such application form?

A. (Producing document.) Yes, we used two forms in 1952.

(443) (The application forms were thereupon marked for identification by the Reporter as Exhibit 54.)

Q. (By Mr. Klein, continuing): I will show you a group of documents consisting of five sheets of paper, and ask you whether these were the application forms for loans used by your association in the year 1952?

A. This (indicating) is not an application; I don't know how that got in there.

Q. The last sheet is not?

A. No.

Q. All right, we will take it off and then we will have four sheets?

A. That is right, sir.

Q. These four sheets were the forms used.

Mr. Klein: I should like to offer Exhibit 54 in evidence.

Mr. Dexter: Exhibit 53 was not offered.

The Court: The last one I have is 52.

Mr. Klein: Exhibit 53 was marked, sir, but the witness did not identify it as being within the period, so we did not proceed further.

The Court: Very well.

Mr. Dexter: I have no objection except the continuing objection, except to indicate that Exhibit 54 was not in use until July of 1952. It does not cover the entire year 1952.

(444) The Court: Received.

Q. (By Mr. Klein): And in determining whether to grant a loan or not, what was the basis, the security of the mortgage of the property?

Mr. Dexter: Well, Mr. Klein, you asked him the question. Would you let him answer it?

Mr. Klein: O. K. I will do so, sir. I think your objection is very well taken—the first one, though, sir.

A. Collateral and the individuals involved.

Q. (By Mr. Klein): What do you mean by "collateral," sir?

A. The real estate offered as collateral.

Q. And you say the individuals involved. What did you mean by that, looking at your form?

A. Their stability and as individuals with whom you wish to do business, sir.

Q. Did you get a financial statement from them?

A. We run a credit report, sir, on most cases.

Q. Determine the net worth and income power?

A. Mostly income power and what we think they are worth.

Q. And did you, in making your mortgage loans, operate conservatively or not conservatively in '52?

Mr. Dexter: Your Honor, I would suggest that those terms are ambiguous. Unless Mr. Klein wants to define what he means by the terms, I don't think the witness (445) is qualified to answer.

Q. (By Mr. Klein): I will qualify it in respect to appraisal, security of the property you took as mortgage to secure your loan. Were you conservative or not conservative?

A. I would say we were more conservative than the FHA appraisals.

Q. And how much of a valuation would you require as security for a loan? In other words, what would the appraisal have to be in order to secure the loan, in percentages?

A. Legally we could loan up to 75 per cent of the appraisal.

Q. What was your practice?

A. Our practice in '52?

Q. Yes, sir.

A. I can't recall. I think they ran around 60 per cent or 57, somewhere in that neighborhood.

Q. Of—

A. (Interposing): Of the appraised value.

Q. In other words, the mortgage would be between 57 and 60 per cent of the appraised value?

A. Now, that is an estimation.

Q. Yes. And what interest rate did you charge in '52?

A. It was a straight six per cent monthly deduction.

Q. Six per cent monthly deduction. And it was amortized on equal monthly installments?

A. That is right, sir.

Q. And what was the average—I say average—term of your (446) mortgage?

A. Eleven years, six months.

Q. Some were less and some were more?

A. No. That is the amortization schedule.

Q. You just had a fixed amortization schedule of eleven years and six months.

And when you received a mortgage from a borrower, was it your practice to promptly record that mortgage or not?

A. That is right, sir.

Q. Well, you did record it?

A. Yes, sir.

Q. Promptly?

A. Yes, sir.

Q. With the Register of Deeds?

A. That's right.

Q. Now, as a man experienced in the savings and loan business in Marshall, you knew, did you not, of other people who were engaged in the business of loaning money secured by mortgages on homes and otherwise?

A. That's right, sir.

Q. And what institutions do you know in Marshall in '52 were engaged in that business?

A. Institutions in Marshall?

Q. Yes.

A. Well, aside from insurance companies, the Michigan National (447) Bank, sir.

Q. So the insurance companies and the Michigan National Bank were also in the business of loaning money secured mortgages on homes?

A. That is right.

Q. And do you know from your experience in the business in '52 whether or not the Michigan National Bank loaned money on the same types of homes that you loaned money on?

A. Well, they did loan money on real estate, that is right, sir.

Q. The same type of homes you loaned money on?

A. Yes, I believe so.

Q. And in the same locality and area?

A. I would say so.

Q. Did your association do any other business besides the mortgage business?

A. The association did not, sir.

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(448) Q. Did you sell checks of any kind?

A. No, sir.

Q. Do you have Christmas and vacation savings plans?

A. No, sir.

(Photographs were marked Plaintiff's Exhibits 55-A and 55-B by the reporter.)

Q. I will show you some photographs; one has been marked Plaintiff's Exhibit 55-A and the other Plaintiff's Exhibit 55-B, and I ask you if you would say the structures of which they are photographs?

A. That is our association, sir.

Q. That is 55-A you are pointing to?

A. Yes.

Q. And 55-B is what, sir?

A. The Michigan National Bank, sir, in Marshall.

Q. And how far are they from one another?

A. Two blocks and a half.

Q. You have a pretty nice looking structure there, do you not?

A. I have an opinion, I guess.

Q. What is your opinion?

Mr. Dexter: Your Honor, the exhibit speaks for itself?

A. We are not as flamboyant or as great as the Michigan National; (449) let's put it that way.

Q. Pretty nice-looking building?

A. Not compared to your bank, sir.

Q. Would the inside have counters like a bank? ☒

Mr. Dexter: I object.

A. We have counters, wooden counters, sir, not marble.

Q. Showing your conservative policy?

A. Definitely, sir.

Q. But you do have counters and the appearance of a bank?

A. Not the appearance of a bank. We are very informal, sir.

Q. Very informal?

A. Yes, sir.

Mr. Klein: Well, that is a very nice way to be, and I appreciate your testimony, sir.

I would like to offer these exhibits into evidence, sir, 55-A and 55-B.

Mr. Dexter: No objection, except the continuing one, your Honor.

The Court: Received.

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(451)

Cross Examination

By Mr. Dexter:

Q. May your shares be assigned?

A. They may, sir.

Q. May they be assigned without the consent of the Association?

A. No, sir.

Q. May these shares be redeemed or repurchased at the option of the Association?

A. I believe it is in the by-laws. I couldn't answer that.

Q. In other words, if that is provided for in the by-laws, that is what would be done?

A. You mean repay them?

Q. That is right, repurchase them.

A. That is right, sir.

Q. Do you reserve the power to refuse anyone's wish to become a shareholder?

A. No, not necessarily.

Q. Don't you have that power reserved?

A. Oh, I see what you mean. I didn't understand you.

Q. Do you reserve the power to not permit a person to become a shareholder?

A. That is right.

Q. And that has been provided for in your by-laws?

A. That is right, sir.

Q. And it is part of your actual practice to go through that (452) actual process of accepting a member?

A. Yes, to evaluate them.

Q. And to determine whether you are going to accept them or not?

A. Yes.

Q. And I think you stated in one instance at least that you could recall that you didn't accept a member?

A. That is right, sir.

Q. Now, will you describe the nature and category of your assets and liabilities as of 1952? I am not interested in the numerical amounts.

A. You want me to enumerate them as they go through?

A. Well, describe the nature of each category of assets and liabilities that the Association has.

A. Assets, we had first mortgage loans and share loans, stock in the Federal Home Loan Bank, the other investors' securities, also a time deposit with the Michigan National, the office building and the furniture and equipment.

Q. What cash reserves and deposits are you required to keep?

A. I can't quote you the exact percentage on that.

Q. Where would that be found? Where would you find the information?

A. On the books, in the law, same as the loan association?

Q. In other words, you follow the requirement of the law there?

A. Yes, sir.

Q. And that is the kind of reserves deposits that you keep?

(453) A. Yes, sir.

Q. Do you maintain checking accounts for your customers?

A. No, sir.

Q. Do your shareholders have the right under the by-laws to withdraw their money on demand?

A. Under the by-laws, upon thirty days, if approved by action of the board of directors.

Q. They cannot get it on demand, and they cannot walk in and withdraw it?

A. No; we have the restrictions, sir.

Q. That is thirty days, and subject to approval by the Board?

A. That is right.

Q. Are your shareholders considered creditors by your association?

A. Yes, they would be creditors, wouldn't they? They are not creditors to the Association, no.

Q. Are they creditors of your Association?

A. No.

Q. Where do you keep the cash you are required to have on hand for business needs?

A. In the Michigan National Bank, sir.

Q. And can you state the amount of that money you had in the year 1952?

A. According to this statement here—

Q. (Interposing): That is, according to Exhibit 37-H?

(454) A. \$34,548.77.

Q. That would be deposited with the Michigan National Bank?

A. That is right.

Q. Do you keep it in a regular commercial account with the Michigan National Bank?

A. Yes, sir.

Q. Do you maintain any other kinds of deposits in commercial banks?

A. In 1952, sir?

Q. Yes.

A. No, sir.

Q. Did you at any time prior to 1952?

A. No, sir.

Q. Do you do any other business with commercial banks?

A. As of now you are speaking?

Q. As of 1952?

A. No, sir.

Q. Must a person be a member in order to obtain a loan?

A. Yes, sir.

Q. What percentage of persons who borrow from your association are members?

A. They all file a membership application for borrowing.

Q. So all your borrowers are members of the Association?

A. That is right, sir.

Q. And you have a right to receive or reject members?

(455) A. That is right, sir.

Q. Do you loan any money to finance companies?

A. No, sir.

Q. What percentage of your loans are secured by mortgages on farm and residential property?

A. Farm would be a small percentage; I am estimating about twelve per cent.

Q. On farm and residential?

A. Oh, all of it, a hundred per cent; I thought you meant farms.

Q. No, both of them. A small percentage of that is on farms?

A. Yes.

(456) Q. Do you know what the average amount of the loans are that you make?

A. In 1952, it is, now?

Mr. Klein: I think it will show on your report; take the total number of mortgages and divide it by the number made.

A. Somewhere around \$6,000; somewhere in that neighborhood.

Q. (By Mr. Dexter, continuing): Do you make any straight mortgage loans?

A. Straight real estate mortgage loans, yes, sir.

Q. Do you make any open-end type of loans?

A. Yes, sir.

Q. This relates to the year 1952, you understand, all these statements?

A. Yes. The question on that in 1952 we inaugurated the open-end type, but I don't know if we made any at that time.

Q. I see.

A. It is possible we did.

Q. You could check your records if we deem it necessary to indicate that?

A. Yes.

Q. What provisions are made in your mortgages concerning prepayment?

A. Prepayment?

A. Yes.

(457) A. There is no penalty on prepayment.

Q. No penalty whatsoever on prepayment. Then would you consider them more or less liberal than prepayment clauses used in bank mortgages in your locality?

A. I don't know the bank clauses, sir.

Q. I see. As I understand it, you had no FHA or VA mortgages in 1952?

A. That is correct.

Q. What would you do with such request for such type of loan?

A. Refer them to the Michigan National Bank.

Q. Do you sell or assign any of your mortgages?

A. No, sir, not since I have been there.

Q. Once the mortgage and mortgage note are signed, how are the funds then made available to the borrower?

A. They are—as of the date of closing, by checks.

Q. And check drawn on—

A. (Interposing): Michigan National Bank.

Q. Check drawn on the Michigan National Bank is the way you transmit the money to the borrower?

A. That is right, sir.

(458) Q. Stressing the fact that we are discussing the calendar year 1952, what was the situation of the mortgage money market in that year?

A. In 1952 the mortgage money market was low, as far as the amount of capital we had.

Q. In other words, there was more demand for mortgages than you had—

A. (Interposing): Money.

Q. (Continuing)—money to lend?

A. That is right, sir.

Q. That would be a reason, then, why in 1952 you were not interested in trying to advertise the fact that you made mortgages?

A. That is right.

Q. What you needed was more money to fill the demand for mortgages that you already had?

A. That's right, sir.

Q. Is that one reason why it wasn't essential for you to get into the FHA and VA type mortgage?

A. That is right.

Q. In other words, in the Marshall area, the area you service, did the demand for mortgage money on homes exceed that which could be supplied by your association

and other building and loan associations and banks in the area?

A. I would say definitely yes.

(459) Would you describe the nature and extent of governmental supervision and the governmental agencies supervising you?

A. In 1952, it was the Michigan Department of State, the Building & Loan Division.

Q. The Building & Loan Division of the Secretary of State of the State of Michigan?

A. Yes, sir.

Q. Are you a member of the Federal Reserve System?

A. We are a member of the Federal Home Loan Bank of Indianapolis, sir.

Q. But not a member of the Federal Reserve System?

A. No, sir.

Q. Are you a member of the Federal Deposit Insurance Corporation?

A. Not in 1952.

Q. Are you permitted to borrow from the Federal Reserve System?

A. From the Federal Home Loan Bank of Indianapolis.

Q. But not from the Federal Reserve System?

A. No, sir.

Q. Are you a member of the Federal Home Loan Bank of Indianapolis?

A. Yes, sir.

Q. What agency of the Government, if any, insures your stockholders or shareholders?

A. At that time none, sir.

Q. 1952 you did not have any?

A. No, sir.

(460) Q. What provision and procedure is made in your by-laws for paying off investors in the event of emergency or insolvency?

A. As far as the association is concerned?

Q. That's right.

A. The only provision—I don't know. Do you know?

Mr. Mackey: I can't answer that.

Q. (By Mr. Dexter): Would that be provided for in your by-laws?

A. Yes, sir, it is.

Q. The practice you would follow would be the practice required in those by-laws?

A. Yes, sir.

Q. But you don't know precisely what that procedure is?

A. No, I do not.

Q. In our little discussion about your principal place of business, the picture introduced as the exhibit is your sole place of business?

A. That is right.

Q. Well, now, as I understand, it is very modest?

A. It is. It is a very old building, one of the first ones, I believe, in Marshall.

Q. How long have you been in that building?

A. I think they moved in there in '32. I can be wrong, but I think they moved in that building in '32.

Q. When did the Michigan National Bank come into that area?

A. Before my time. I couldn't tell you.

(461) Q. How many employees do you have?

A. One bookkeeper, an assistant—parttime bookkeeper.

Q. And yourself?

A. And myself.

Q. Do you know how your Federal income taxes are computed?

A. We have an auditor to do it, sir.

Q. Would you be familiar with the method used?

A. Just to the extent that I have studied the guide, is all, and he is the man that keeps up on it.

Q. Would you know whether your bad debt reserve for Federal income tax purposes is computed in the same manner as banks?

A. No, our bad debts is all included in our reserves. That is all in our reserves.

Q. You don't know how that is treated for Federal income tax purposes as compared with banks?

A. No. It is 12 per cent or something. I don't know the exact wording.

Q. Do you know the types and amount of taxes paid by your association during 1952, and to the governmental agency to whom it was paid?

A. The only taxes we paid was real estate property taxes in 1952.

Q. Did you pay any personal property taxes?

A. No, sir.

Q. Did you pay any intangibles tax?

A. Intangible tax to the State of Michigan, yes, sir.

(462) Q. What was the market value of your shares in 1952?

A. \$100.

Q. 100 per cent on the dollar?

A. Yes, sir.

Q. No variation in that whatsoever?

A. None whatsoever.

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(463) Q. Has your association prior to the year 1952 had any direct connection with personnel of the Michigan National Bank?

A. Yes, sir.

Q. Would you state what that connection is or was?

A. When I came in the association, the senior vice-president and manager of the Michigan National Bank was a member of our Board of Directors, sir.

Q. And in that time, what was the relationship of your business between the business of the Michigan National Bank?

Mr. Klein: What do you mean by "relationship"?

A. We were both in the same—

Mr. Klein (interposing): Just a moment, sir. What do you mean by "relationship," Mr. Dexter?

Mr. Dexter: I mean—let me ask you this:

Q. (By Mr. Dexter): During that period, did your association take the kind of loans that the Michigan National Bank didn't particularly want?

A. I didn't quite understand that. Do you mind?

(464) Q. As I understand it, for a period prior to 1952, an executive of the Michigan National Bank was on your board of directors?

A. That is right.

Q. Let me ask you this. Did the fact that he was on your board of directors have any effect on the type of business your association did?

A. No, sir.

Q. Did that put an official of the Michigan National Bank in a position to know the complete business of your association?

A. Yes, sir.

Q. What kind of power in regard to your association would such official have?

Mr. Klein: Did he have, not would he have.

Q. (By Mr. Dexter): Did he have?

A. As a member of the board, he had power of assisting in making policies for the association, yes, sir.

Q. How many members of the board were there in that period of time?

A. Twelve, sir.

Q. When did this person leave the board of directors?

A. 1948, January.

Q. As I understand, before you would accept any shareholder or make any loans to any individual that that person had to be a member of the association?

A. That is right, sir.

(465) Q. That is specifically provided in your by-laws?

A. That is right, sir.

Q. So you as an association are permitted by law to refuse—

A. (Interposing): That is right.

Q. (Continuing): —anyone becoming a shareholder with your organization?

A. That is right.

Q. As I understand, in 1952 there was a limit to the amount of shares that any one person could get; you don't know whether that was \$10,000 or \$20,000?

A. I couldn't answer that. I think it was ten.

Q. Could you check to find out what that was?

A. Yes, I can.

Q. What was the average amount that a shareholder held in your association during 1952?

A. I couldn't answer that.

(466) Q. (By Mr. Dexter, continuing): 201 members you had on your June 30, 1952 balance sheet?

A. 201 members.

Q. Yes.

(467) A. Somewhere, an approximation of twenty-five hundred to three thousand—about twenty-seven hundred.

Q. (By Mr. Dexter, continuing): That is on your June 30, 1952 balance sheet, Exhibit 37-H?

A. Yes.

Q. All right. What would the average be, as of June 30, 1953?

A. 335—approximately a little better than two thousand, sir.

Q. I see. All right. Now, in reference to Exhibit 37-H and Exhibit 37-H-1, is there any information on there that indicates the amount of mortgages taken in the calendar year 1952, or does it just contain totals?

A. I think it indicates the number of mortgages made.

Q. Within the particular calendar year?

A. Within a particular period, yes; six months, and so forth; this is every six months.

(468) Q. Does it indicate the amount of new mortgage business?

A. No, no.

Q. It just indicates totals?

A. Totals, sir.

Q. The same would be true in reference to Exhibit 36-G, your monthly statement of December 31, 1952?

A. That exhibit is the total portfolio of the amount of the mortgages, but it also indicates the number of loans made too.

Q. But not the amounts?

A. No.

Q. All right.

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A. (Interposing): Not broken down. For example, there are two loans there which total \$9,500; one could have been for \$6,000.

Mr. Klein: It shows the total made during the month?

A. Yes, but not for each loan.

Q. (By Mr. Dexter, continuing): It does not show the total for the calendar year 1952?

(469) A. No.

Q. The month or amount?

A. No.

Q. Are your shares traded over the counter?

A. Please explain.

Q. Are your shares traded over the counter, sold on the stock exchange?

A. No, sir.

Q. Or sold in any other way of a comparable nature?

A. Not that I know of, sir.

Q. In addition to mortgage loans, do you loan on your own shares?

A. Yes, sir.

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Re-direct Examination

By Mr. Klein:

Q. Looking at Exhibit 36-G, Mr. Anderson, the part under "Supplemental information," relating to mortgages; that does show, does it not, the total amount of mortgages made in the month of December, 1952, and the total amount of mortgage (469½) money loaned by the Association in that month?

A. In that month, that is right.

(470) Q. And looking to Exhibit 37-H, on page 11, is it not true that there is a tabulation from 1 to 5 on page 11 showing the total number of loans made for the

fiscal year ended June 30, 1952, as aggregating 68 mortgages and \$202,968 total?

A. That is right.

Q. Those are new mortgages and loans made during that period?

A. That is right.

Q. And similarly on page 5 of Exhibit 37-H-1, there is a tabulation showing that during the fiscal year from July 1, 1952, through June 30, 1953, there were a total of 81 new mortgage loans made for an aggregate of \$262,031?

A. That is right.

Q. Now, looking at those exhibits and tabulations, I see for the year 1953, ending June 30, 1953, 18 were made for construction.

A. That is right.

Q. That is of homes, I suppose?

A. Yes, sir.

Q. Thirty-two for the purchase of homes?

A. That is right.

Q. Seven for the refinancing of mortgage loans held by another lender?

A. That is right.

Q. In that connection, did you ever during that period refinance (471) a loan held by the Michigan National Bank?

A. It is quite possible, sir.

Q. Did they ever refinance loans within the year '52 held by you?

A. That is very possible.

Q. And under item 4 there were 6 loans for additions, alterations, repair or reconditioning?

A. That is right.

Q. Then under item 5 there is a heading, "Loans for all other purposes." Eighteen loans of \$54,000. What would those other purposes be, sir?

A. Well, people that borrow money to buy cars, to buy other real estate, and things like that, for investment purposes. I would have to check.

Q. Other than purchasing of their own homes?

A. Yes, that is right.

Q. Now, there was some inquiry made of you by Mr. Dexter about membership. Did a person have to be a member when you sought his investment in shares?

A. I didn't seek their membership.

Q. No, but I just want to clarify this. When you advertised for investments, did the person to whom—or from whom you solicited have to be a member at the time?

Mr. Dexter: Your Honor, he has testified that he didn't solicit, and he didn't advertise.

(472) Q. (By Mr. Klein): Did you endeavor to get investment shares in 1952?

A. Yes.

Q. And did those persons whom you approached or who came to you have to be members before they made investments?

A. No, sir.

Q. They only became members when you accepted their investment?

A. They became members at the time of the acceptance.

Q. You don't recall rejecting anyone who sought investments, with one exception?

A. That is right, sir.

Q. And similarly any person from whom you sought or who came to you for mortgage loans, that person did not have to be a member prior to his taking a loan?

A. He applied for a membership, sir.

Q. When he applied for the loan?

A. When he applied for an application for a membership.

Q. In other words, if he got a loan, he became a member?

A. That is right.

Q. But he did not have to be a member until he got the loan?

A. That is right.

Q. And you never rejected any mortgage application for that account?

A. Well—

Q. (Interposing): You rejected it because he didn't qualify?

(473) A. The standards and so forth, didn't qualify.

Q. Now, FHA loans and VA loans in '52 were for a period of 20 years or more, weren't they?

A. I believe so. I do not know too much about it.

Q. And isn't that one of the reasons your association didn't take those loans in 1952, because they were for too long a period?

A. No, sir.

Q. Why didn't you take the loans?

A. Because we do not have the money, sir. We could use our money conventionally.

(474) Q. (By Mr. Klein): Did you have a preference as to conventional mortgages in '52 as contrasted with taking FHA or veteran's mortgages in '52?

A. A preference? No, sir, our policy was conventional mortgages, sir.

Q. Did you consider whether you should take FHA mortgages?

A. We did not, sir, any time.

Q. Never even considered it?

A. We did not consider it, sir, no, sir.

Q. Did you know that legislation had been passed by the Congress of the United States providing for FHA and veteran's loans to encourage home building and home ownership?

A. That is right, sir.

Q. But your association didn't choose to follow that policy?

A. It was never brought up as a matter in the minutes of the board, sir.

Q. Was it considered by you as manager of the association?

A. Not as anything to present to the board, sir.

Q. How about you as manager, you made mortgages up to \$10,000 (475) without the board.

A. But I couldn't say without the board approving—

Q. (Interposing): This is under ten. Did you consider FHA mortgages as management?

A. Oh, no.

Q. Now, in 1952, did you borrow any money from the Federal Home Loan Bank?

A. Why didn't you have me bring the books? I would have to go back and find out.

Q. Exhibit 36-A would show whether you borrowed money, wouldn't it?

A. Yes, we did.

Q. How much did you borrow?

A. Sixty-six thousand, sir.

(476) Q. Was that the limit of your borrowing from the Federal Home Loan Board?

A. No, sir.

Q. You could have borrowed more money in 1952 than you did?

A. That is right, sir.

Q. And you could have used that borrowed money to make more mortgages, couldn't you?

A. Yes, sir.

Q. But you elected not to do so?

A. That's right, sir.

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(477) Q. (By Mr. Klein): Do I understand your association paid a real (479) estate tax in 1952?

A. On our building, yes, sir.

Q. That is an ad valorem real property tax?

A. Yes, sir.

Q. Based upon the assessed valuation?

A. That is correct, sir.

Q. And you paid no personal property tax?

A. That is right, sir.

Q. You paid the intangible tax?

A. Yes, sir.

Q. Imposed by the State of Michigan?

A. That is right, sir.

Q. And you paid the annual privilege fee to the Secretary of State?

A. I am assuming that, yes, sir.

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(480)

Re-cross Examination

By Mr. Dexter:

Q. Mr. Anderson, is your association conducted in accordance with the statutes in your by-laws?

A. It is, sir.

Q. So that your purposes, your objectives, what you do, would be set forth there?

A. That's right, sir.

Q. Now, in reference to Exhibits 37-H and 37-H-1, neither one of those exhibits would indicate the money actually lent for the (481) calendar year 1952?

A. I don't think they do.

Q. Are those fiscal year reports?

A. They are for the period—this one is for the end of July. Yes, those are the fiscal year reports, that's right.

Q. There is no information broken down there in terms of money actually lent for the calendar year 1952?

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A. No, it doesn't show for the one year, the fiscal year.

Q. (By Mr. Dexter): I mean for the calendar year 1952?

A. No, sir.

Q. Now, in reference to the miscellaneous borrowings, would that include borrowings of your shareholders on their own shares?

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(482) A. I would like to look at that report again.

Q. (By Mr. Dexter): Yes (handing report to the witness).

A. No. Where I reported that there were 81 loans made totaling so much money, and the question was miscellaneous loans, which I assume means loans for other purposes—

(483) Q. Right.

A. I don't believe that includes share loans.

Q. As I understand, apparently there is some confusion in reference to your testimony in regard to this membership.

Would you explain the sequence of membership versus loaning money, and membership versus becoming a shareholder?

A. An individual to become a shareholder has to file a membership card and sign it at the time that he wants to make his investment.

Q. Is that done before his investment is accepted?

A. Actually, yes, that is right.

Q. Is the same sequence followed in regard to membership for borrowing purposes?

A. For borrowing purposes he signs a signature card and a membership card.

Q. He is accepted as a member before he is lent money?

A. That is right, sir.

Q. And he is accepted as a member before he is permitted to make an investment?

A. Yes; theoretically, we always do that.

Q. That is what your by-laws require?

A. Yes.

Mr. Klein: You said "theoretically." In fact, (484) he does not become a member until he gets his loan, does he?

A. Well, he applies for membership. I see, I do not want to lie—

Mr. Klein (interposing): I know you want to give it to us straight.

A. When a loan is processed, after he applies and is accepted as a borrower, he then becomes a member and signs a membership card, and the loan is made at the same time.

Mr. Klein: And the same is true when he becomes an investor, a man becomes an investor?

A. Yes, sir, that is right.

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(485) PARKER, ROLAND E., was thereupon produced as a witness on behalf of the plaintiff, and, after having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Klein:

Q. Mr. Parker, what is your occupation?

A. I am a savings loan executive.

Q. Of what savings association?

A. First Federal Savings and Loan Association of Flint.

Q. And what is your position with that Association?

A. President and managing officer.

Q. How long have you held that position, Mr. Parker?

A. I have been the managing officer since December, 1944; president since 1952.

Q. And were you employed by the Association prior to that time, sir?

A. No, sir.

Q. And when was your association incorporated, Mr. Parker?

A. 1934.

Q. 1934. And, you have a copy of your charter and by-laws with you, sir?

A. Yes, sir.

Q. May we have them and have them marked, sir?

A. The present charter and the charter immediately preceding the (486) one in 1950.

Q. Yes, I will have it marked—was this (indicating) the one in effect in 1952?

A. Yes, sir.

Q. And the by-laws also?

A. Yes, sir.

Q. (By Mr. Klein, continuing): And, Exhibit 56-A is a photostatic copy of the charter as it was in effect in 1952?

A. Yes, sir; it is certified by our secretary.

Q. And Exhibit 56-B is a printed copy of your by-laws as they were in effect in 1952?

A. Yes, sir; that is also certified.

Mr. Klein: I should like to offer Exhibits 56-A and 56-B in evidence.

Mr. Dexter: No objection, except the continuing one.

The Court: Received.

Q. (By Mr. Klein, continuing): In 1952, were you president and general manager, did I understand?

(437) A. Yes, sir.

Q. And in that capacity you had general executive management of the affairs of Association, subject to the overall control of the directors?

A. That is right, yes, sir.

Q. But you were the executive chief administrative officer?

A. Yes, sir.

Q. And you carried on the day-to-day business, such as the loan business, the taking of shares—

Mr. Dexter (interposing): Your Honor—

Mr. Klein (continuing): Well, may I ask what your duties entailed? I thought I would save time. I beg your pardon, I will go slowly and tediously.

Q. (By Mr. Klein, continuing): What did your duties entail, sir, as president and general manager of the Association in 1952?

A. Well, as managing officer, my duties were administrative; making assignments to staff members to carry

out the ordinary functions of the operation. The staff members were all responsible to me, and I was responsible to the Board of Directors.

Q. How about the books and records of the corporation?

A. The books and records, I was responsible for them, but one of the staff members did the actual physical work.

Q. Right. Did you bring with you the published annual reports (488) of the Association for the periods from December 31, 1947 through 1952?

A. Yes, sir, I have a photostatic copy, which is also certified.

Q. Yes, right, sir.

A. For the various years.

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Q. (By Mr. Klein, continuing): I will show you documents which have been marked Exhibits 57-A through 57-F, inclusive, and purport to be "Statements of Condition," of your Association for the periods December 31, 1947, each year, consecutively, through December 31, 1952, all as at December 31 of each of those years, is that correct?

A. That is correct.

Q. And were these reports published in the newspapers?

A. Yes; there is a copy of the newspaper published report.

Q. Yes. And, were they published pursuant to any statutory or regulatory requirement?

A. There was a time when there was a regulation; I think there (489) no longer is; we still publish them.

Q. During this period in question?

A. I think that there was a regulation at that time.

Q. Yes, sir. And, these reports were prepared and published—were these reports prepared and published in the regular course of your business, and was it the regular course of your business to make such reports?

A. Yes, sir.

Q. And do these reports truly and correctly reflect the financial condition of your Association for each of those periods as at December 31, as entered upon the books and records of your Association for that period?

A. Yes, sir.

Q. And, Mr. Parker, if the Attorney General of the State of Michigan, or his staff, wish to check your books and records at your office, or elsewhere, as the Judge directs, to determine the correctness of these reports, 57-A through 57-F, inclusive, would you be agreeable to having him do so at a reasonable hour?

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(493) Mr. Klein: Exhibits 57-A through 57-F, inclusive, are offered in evidence.

The Court: And they are received conditionally, (494) and subject to the right of the attorney general to insist that the books and records be received in evidence and he have the opportunity to inspect them following such subpoena.

Q. (By Mr. Klein): I show you a document marked Exhibit 58 and ask you what that is, sir.

A. That is the annual report for the Home Bank of Indianapolis.

Q. Made by your association?

A. Yes, sir.

Q. For what period?

A. For the year 1952, fiscal year ending 1952.

Q. And does that bear your signature?

A. Yes, sir.

Q. And your oath. It was notarized as being true and correct?

A. Yes, sir.

Q. And was this filed with the Home Loan Board at Indianapolis pursuant to requirement of the Home Loan Statute?

A. With the Home Loan Bank.

Q. Home Loan Bank?

A. Yes, sir.

Q. And was this report prepared by the association in the regular course of business, and was it the regular course of business for the association to prepare and file such report?

A. Yes, sir.

Q. And does the report truly and correctly reflect the transactions (495) therein indicated of the association and the financial condition, as appears from the books and records of the association for the period in question?

A. Yes, sir.

Mr. Klein: And I make the same statement about the books and records. I now offer Exhibit 58 into evidence.

Mr. Dexter: We would object, of course, on our continuing objection, plus the fact that they are not the best evidence, and I assume that the court's statement in regard to the admission—

The Court: The ruling with reference to Exhibits 57-A to F will apply to this in the same manner.

(496) Q. (By Mr. Klein): Do you know what the original capital of your association was when it was first organized, sir?

A. Well, I was not an employee, but they started from nothing in 1934. Is that the date you mean?

Q. How much was paid in originally?

A. I can't answer that. I was not an employee.

(497) Q. (By Mr. Klein): Do you know whether your association has had a substantial growth from the date of its incorporation to December 31, 1952?

A. Yes, sir, it has.

Q. Do you know how much the growth has been in terms of millions of dollars of capital?

A. Yes, sir. It grew from nothing to eight million plus, in this statement as shown, \$8,011,097.44.

Q. Those were total assets, were they not?

A. Yes, sir.

Q. And on December 31, 1952, you had total investment in shares of \$6,516,000, in round figures?

A. Yes, sir.

Q. And on December 31, 1952, you had first mortgage loans in the aggregate amount of \$5,909,000?

A. Yes, sir.

Q. And what other types of investments did you have as of December 31, 1952?

A. We had unsecured loans in the amount of \$29,613.14, and land contracts in the amount of \$491,642.05.

Q. And you had real estate and then you had Federal Home Loan Bank obligations; is that correct?

A. Federal Home Loan Bank stock.

Q. You had a certain amount of cash in the banks, office building and furniture?

(498) A. Yes, sir.

Q. Now, this report, Exhibit 58, does that give an analysis of the first mortgage loans made during the calendar year 1952 by your association?

A. It tells the number and the types and the purpose.

Q. And it shows an aggregate amount, does it not, of 353 mortgages made in 1952 and the aggregate amount of mortgages of \$2,081,920?

A. Yes, sir.

Q. And I suppose we can get the average amount of the mortgage by dividing the total by the number of mortgages?

A. Yes, sir.

Q. What would that average be?

A. The total at the end of that year amounted to \$4,163, on an average.

Q. What was the maximum loan you made in that year, if you recall?

A. Twenty thousand.

Q. Twenty thousand?

A. Yes, sir.

Q. And what was the interest rate you charged?

A. Typically 5%

Q. Now, did you have FHA mortgages?

A. Yes, sir.

(499) Q. Do you know what percentage were FHA mortgages as at this period or during the year of this 353 mortgages?

A. The statement shows the amount. I don't think it shows the percentage. The other statement, the financial statement, shows the breakdown between the year and—I believe it is in here—but on the other one it shows the amount of FHA, GI's and conventionals. It is in one of the other exhibits. It shows the amount. I haven't broken it down as to percentage.

(500) Q. Those were as of the mortgage balances on hand at that time?

A. That's right.

Q. But you don't know how many of each class you made during that particular year '52?

A. No, I don't.

Q. But you did make a substantial amount of FHA mortgages?

A. Yes, sir.

Q. They were 20-year mortgages?

A. Generally.

Q. And Veterans Association mortgages?

A. Yes, sir.

Q. And then you had conventional mortgages?

A. Yes, sir.

Q. How long were the average conventional mortgages?

A. Twelve to fifteen years.

Q. Were some less than that?

A. Well, there might have been a few.

Q. Some less and some more?

A. Well, a few more, but generally they were twelve to fifteen years.

Q. And what rate did you charge on your conventional mortgages?

A. 5 per cent.

Q. And you knew the Michigan National Bank was making FHA mortgages in 1952 on homes, did you not?

Mr. Dexter: Your Honor, why doesn't he ask the (501) witness a question?

Mr. Klein: I'm sorry.

Q. (By Mr. Klein): Did you know whether or not the Michigan National Bank in 1952 made FHA mortgages on homes?

A. Well, I knew it, but possibly by hearsay.

Q. Well, you were president of an important, substantial, operating mortgage company, weren't you?

A. Yes, sir.

Q. And you, in that capacity, made it your business to know who was in the business of loaning money secured by mortgages on homes in 1952, didn't you?

A. Yes, sir.

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Q. (By Mr. Klein): Was there any competition of any kind for loaning money secured by mortgages in 1952?

A. In the Flint area, very little competition.

(502) Q. Very little?

A. What I mean by that is that you didn't seek mortgages during that year.

Q. Did you borrow the maximum amount you could have borrowed from the Federal Home Loan Bank in 1952?

A. I borrowed as much as was prudently desired.

Q. But not as much as you could, sir?

A. I didn't borrow the total amount, no, sir.

Q. And did you know whether the Michigan National Bank was making mortgages in the Flint area in 1952?

A. Yes, I did.

Q. And were there other institutions making loans secured by home mortgages in 1952 in the Flint area?

A. Oh, yes; many.

Q. Who?

A. Well, the other—at that time there were three other banks, the Citizens Commercial & Savings Bank of Flint, the Merchants Mechanics Bank of Flint, Genesee County Savings Bank of Flint; the life insurance companies, like Equitable, Metropolitan, some from Prudential; and others that I'm not sure how many others, but those are generally the ones who were doing business.

Q. Did you ever in 1952 refinance a mortgage held by the Michigan National Bank, your association?

A. I might have.

(503) Q. And did the Michigan National Bank in turn refinance mortgages held by your association in 1952?

A. Well, that happens nearly every year. I couldn't say that it happened in 1952, but it happens continuously, sir.

Q. Right along?

A. It probably did.

Q. And each of your respective institutions, talking about the Michigan National Bank and your association, did they make mortgage loans in 1952 secured by residential property on the same type of properties?

A. Well, they made on the same type—you mean exclusively or--

Q. (Interposing): No, no.

A. Did they make some on the same type?

Q. Yes, sure.

A. Yes.

Q. And in the same area as you did?

A. Yes, sir.

Q. And to the same class of people who were borrowers?

A. I don't know how you class people, but I would think so.

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(504) Q. Mr. Parker, again referring to Exhibit 58, Schedule 2, analysis of first mortgage loans made during the year 1952, I see there is a heading "Other Purposes," other than construction, purchase of homes, or refinancing; what were the "Other purposes" of these loans?

A. Generally, builders loaning waiting for permanent financing through conventional FHA or GI sources.

Q. Did you make any loans to individuals secured by mortgages on their homes for financing purposes of automobiles?

A. Very few during the year 1952.

(505) Q. You did make some?

A. We might have made one or two, but very few, very limited.

Q. And what other classes of loans or purposes were there under that heading "Other Purposes"?

A. Modernization of property.

Q. Well, that is under one of these others.

A. That would come under—it might be the purchase of some other property, new property that the man would borrow on a short term loan until he sold the old home.

Q. Or could it be for personal use?

A. Well, it could be funeral expenses, or other personal uses.

Q. Other personal uses?

A. That is right.

Q. Now, do I correctly understand in the year 1952, and in prior years, your Association sought out people to invest in shares or share accounts of the Association; you advertised, did you not?

Mr. Dexter: Your Honor, I think that the witness is being led. I do not think he testified anything about advertising.

Q. (By Mr. Klein, continuing): Well, did you seek out investors of shares; did your Association seek to get as many investors for your shares in 1952 as you could?

A. Yes.

Q. Did you advertise?

(506) A. Yes.

Q. What source of advertising, what media of advertising did you use?

A. Newspaper, radio, pamphlets, some direct mail.

Q. How often did you use the newspaper, radio—

A. (Interposing): Well, I can tell you the breakdown as to amounts spent in each classification, if you—

Q. (Interposing): Well, were you in the papers frequently or not?

A. Yes, the newspapers' advertising would be 50 per cent of our advertising.

Q. How often, approximately, would you have an ad in the paper?

A. Probably once a week.

Q. And how about radio?

A. Well, spot announcements at various times during the week.

Q. And were you on TV?

A. No, we do not have a TV station.

Q. You do not have a TV station; and then you used direct mail advertising—

A. We have at different times; I am not sure about 1952.

Q. And were the people whom you tried to reach members at the time you put the ads in?

A. No, they become members afterwards.

Q. They become members after they come to your Association and asked to start a savings account?

(507) A. Well, simultaneously; at the same time.

Q. Yes. And, what were the rights and liabilities of such persons who became members when they simultaneously became account holders and members; what were their rights, and what were their liabilities as a member?

A. Well, I cannot think of any liabilities they might have. Their rights would be that they would be entitled

to vote at our annual meeting; one vote for each \$100 investment, to a maximum of fifty votes.

Q. Do you recall how many—well, I think it shows here—that as of December 31, 1952, how many shareholder members did you have, or investment accounts?

A. There are two figures. It was either 3047 or 3029, I don't know which.

Q. And they had an aggregate shareholding investment of \$6,516,000?

A. That's right.

Q. Have you figured out the average account runs about a little over about twenty-one or twenty-two hundred dollars?

A. \$2,138.

Q. And was there any limit on the amount you would accept by an investor shareholder?

A. You mean by dollar?

Q. Dollar limit?

A. No.

(508) Q. You would take as much as they would be willing to invest in the shares?

A. That's right.

Q. And did you have professional men as investors?

A. What do you mean by that?

Q. Doctors, lawyers?

A. Yes.

Q. Business men?

A. Yes.

Q. Did you have corporations as investors?

A. We have had at different times. I'm not sure about '52.

Q. Trustees of estates or other trusts?

A. Yes.

Q. And did you in '52 take investors who were trustees of pension plans?

A. I don't think so.

Q. Did you have investments by various charitable organizations who had money to invest?

A. Yes, I think so.

Q. And did you or did you not appeal to any particular economic or income strata of investors?

A. No.

Q. Did you or did you not appeal to investors of all economic classes?

A. Yes.

(509) Q. In other words, anyone who wanted to make an investment, there was no limit on the amount you would try to get from them?

A. That's right.

Q. Was the investor a creditor of the Association?

A. No, sir.

Q. Was he a shareholder?

A. Yes, sir.

Q. Did you agree to pay him any fixed rate of interest on his investment?

A. No, sir.

Q. Did you agree to pay him any fixed rate of dividend on his investment?

A. No, sir.

Q. In other words, the investor took the risk of profit or loss in your operations?

A. I don't know what you mean by "loss."

Q. Well, if you lost, his equity would be worth less, his shares?

A. He would get less dividend. He wouldn't actually lose his amount assessable.

Q. Well, at least his investment would become worth less, wouldn't it?

A. Well, he would have less dividend, yes.

Q. Well, if your association happened to have lost money, his equity in the corporation would be less, wouldn't it?

(510) A. Well, now, his—

Q. (Interposing): Well, in other words, he had a stake in the business?

A. Well, but his investment wouldn't shrink.

Q. Well, if the dollar value of the assets went down, the value of his pro rata share in corporation would be worth less, wouldn't it?

A. Well, now, you are getting into a technical question. I mean, here, if he has a thousand dollars and you lose money for one year, he still has a thousand dollars. That doesn't become worth less.

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Q. (By Mr. Klein): Was it necessary for a borrower to be an investor in shares?

A. No, sir.

Q. And was it necessary for him to be a member before he became actually a borrower?

A. No. He did at the time he borrowed, he became a borrower.

Q. Did he have to pay anything to become a member when he became a borrower?

A. No, sir.

(511) Q. Was there any liability or obligation attached to his becoming a member when he became a borrower?

A. No.

Q. And what procedure did you follow in considering applications for mortgage loans? Did you bring an application form with you, sir?

A. Yes, sir. (Handing document to Mr. Klein.) There is other exhibits in there. You could take that out if you like.

(A form of application for loan was marked Plaintiff's Exhibit No. 59 by the reporter.)

Q. I will show you Exhibit 59 and ask you whether or not that was a form of application for loan used by your association in the year 1952?

A. Yes, sir, it was.

Mr. Klein: I offer that in evidence.

Mr. Dexter: No objection, except the continuing one as to materiality.

The Court: Received.

Q. (By Mr. Klein): And I see according to this Exhibit 59 you required the information as to the financial worth of the applicant and his income and sources of income, and so forth?

A. Yes, sir.

Q. And did you follow the practice of having an appraisal on the property on which a mortgage was sought?

(512) A. Yes, sir.

Q. And as a matter of policy, were you conservative in making loans in 1952?

A. Yes, sir.

Q. And following that conservative policy, what was the ratio of loan you would make in respect to the valuation of the property to be mortgaged?

A. Well, I can state the maximum. Generally there is more that goes into it than that. The maximum loan that we were making at that time was 66 $\frac{2}{3}$ %, two-thirds of the appraisal value. That was maximum, graded down from there.

Q. What was your policy or average amount in '52?

A. I am only stating it from memory. I think it was maybe 52 to 55 per cent.

Q. And what types of mortgages did you say you used? All types, in '52?

A. You mean like FHA, GI's, conventional?

Q. Yes.

A. Yes, sir.

Q. You don't have a breakdown of that, other than what appears in the record?

A. We have a total at the end of the year, but not the originations.

Q. And the amortization was on an equal basis per month on each (513) of those mortgages?

A. Every mortgage was a monthly amortization mortgage, except possibly a few builders' loans, which were short-term loans.

Q. And excepting the builders' loans, the monthly amortizations would be equal throughout the entire term of the loan?

A. That is right.

Q. There would be no ballooning at the end?

A. No, sir.

Q. In what area in and about Flint did your Association seek and/or obtain mortgages in 1952?

Mr. Dexter: Your Honor, that is a double question, seek and/or obtain, and I don't believe the witness has testified that they sought mortgages at all.

Q. (By Mr. Klein): Did you seek mortgages in '52?

A. No, sir, it wasn't necessary.

Q. If wasn't necessary. People came to you to borrow money, did they?

A. That is right.

Q. But you did try to get as much investment as you could, investors' shares, didn't you?

A. Yes, sir.

Q. And you didn't borrow to the limit to get money to make mortgage money available?

A. That is shown in the statement as to the amount.

Q. But you didn't borrow the maximum, I think you testified (514) before.

A. I said we borrowed a prudent amount.

Q. Have you ever had a different rate of interest than five per cent interest at any time in the history of your Association?

A. Yes, sir.

Q. What was the interest rate?

A. Are you talking about before '52?

Q. Both before and after.

Mr. Dexter: Your Honor, I request that the answer in reference to anything after '52—the question with reference to anything after '52 be stricken.

The Court: You may go on a separate record; however, you better separate the two questions, in view of the fact that we are—

Mr. Klein: Very well.

Q. (By Mr. Klein): Did you have any different or higher interest rate on mortgages prior to '52 than five percent?

A. In some cases, yes, sir.

Q. Did you have a higher interest rate on mortgages after 1952 at any time?

A. Yes, sir.

Mr. Dexter: We object to that.

The Court: Anything after '52 is on a separate record, unless there is a special purpose—

(515) Mr. Klein (interposing): I think there is a special purpose. If you wish, I will state the purpose.

The Court: Yes, sir.

Mr. Klein: Mr. Dexter tries to make the point that because he indicates that the mortgage money market was tight that there is no competition. At least he is going to argue that.

Of course, that is just like saying Ford, Chevrolet and Plymouth did not have competition in selling automobiles when automobiles were hard to get. They are still competitors, and I think the Government has always so indicated.

Now, I think various terms of mortgage interest rates and different conditions will indicate part of the competitive situation, and that is all I am trying to indicate, that depending on the demand and supply, terms are better or worse, depending on the situation. That is all I am trying to develop in that line of questioning, sir.

The Court: It is understood the objection applies, and I will rule on it later if it seems to have any materiality.

Q. (By Mr. Klein): Did you say you had higher rates after '52 at any time for any mortgages?

A. Yes, sir.

Q. What rates did you charge after '52?

A. We don't have a fixed rate. The rate will vary as to the age (516) of the property and location of the property. The highest rate that we have ever charged on any loan was six per cent.

Q. Would your interest rate be affected by the demand and supply for money?

A. Not necessarily.

Q. You say not necessarily. Would it be a factor?

A. It could be a factor.

Q. And the terms of your mortgage could be a factor, could it not?

A. Well, it could be, yes, sir.

Q. And could the appraisal ratio to the amount you loan, on an appraisal ratio, be a factor in considering the demand and supply of mortgage loan money?

Mr. Dexter: These last three questions are all hypothetical: could be, could be.

Q. (By Mr. Klein): Would be a factor?

A. During which year?

Q. 1952, to start with.

A. No, sir.

Q. Law of supply and demand, wasn't that a factor at all times in determining what your policy would be, your loaning policy?

A. Well, generally the flow of mortgage money is governed by supply and demand, of course, and usually the rate is governed (517) by the other people in the community or by the type of association that we are in. I don't want to make a speech here, but—

Q. (Interposing): What other people are you talking about now?

A. I mean the other people who are lending in the same area.

Q. So that was a factor in determining, one of the factors in determining your policy of your association?

A. That is right.

Q. Yes. Now, in what area, in and about Flint, did your Association make loans in 1952, mortgage loans?

A. Genesee County.

Q. Genesee County. As a rule or practice, in 1952, when your Association received a mortgage, after making a loan, did your Association promptly record such mortgage?

A. Yes, sir.

Q. With the Register of Deeds?

A. Yes, sir.

Q. Now, in 1952, Mr. Parker, did your Association pay an annual privilege fee or tax to the state of Michigan?

A. No, sir.

Q. Did your Association pay an intangibles tax on the shares to the state of Michigan?

A. Yes.

Q. Do you recall the rate of that tax?

A. Yes, I think it is forty—

(518) Q. Forty cents a thousand?

A. Forty cents a thousand, that is right.

Q. Yes. And, did your Association pay an ad valorem real property tax on real estate which it owned?

A. Yes, sir.

Q. In 1952?

A. Yes, sir.

Q. That was based on the assessed value of the real estate?

A. Yes, sir.

Q. And you paid whatever the going tax was for real property tax in Flint or Genesee County?

A. Yes, sir.

Q. Did your Association pay a personal property tax in 1952?

A. No, sir.

Q. You did not?

A. No, sir.

Q. About how many people did you employ in 1952, Mr. Parker; I say you, I mean your association?

A. I would have to guess; I would guess ten.

Q. And is your office anywheres near the Michigan National Bank?

A. It is two blocks.

Q. And is it near any of the other banks?

(519) A. One block from—

Q. In Flint?

A. —the Genesee County Savings Bank, and a block and a half from the Citizens Commercial Savings Bank.

Q. Did I get from you the rate of dividend that was paid in the year 1952? Did I ask you that before?

A. No, sir. The rate was two and one-half per cent.

Q. What is the present rate of dividend—and I know this is subject to a special record.

A. Three and a quarter per cent.

Q. Was there any special economic class, as far as income, in determining your loaning policy, that is, as to the people to whom you loaned money; were they from any special classes, or from all economic classes?

A. From all economic classes.

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(520)

Cross Examination

By Mr. Dexter:

Q. May any of the shares of your association be assigned?

A. You mean without our acceptance?

Q. May they be assigned—period?

A. Well, I mean I do not quite understand; to another person, or collateral, or to assigned ownership?

Q. That is right, assigned ownership?

A. Not without our transfer.

Q. But they may be assigned if you consent?

A. Yes.

Q. The association consents?

A. Yes.

Q. Can the shares be redeemed or repurchased at the option of the Association?

A. Yes, sir.

Q. Is that done from time to time?

A. Well, yes; that is a matter of regular course of business.

Q. And in redeeming the repurchases, what is the amount paid?

A. Well, the withdrawable value, which is the original amount, plus accumulated dividends.

Q. That is, the original dollar amount put in, plus the accumulated dividends that have been actually declared?

A. That is right.

Q. So the repurchase, or redeemed shares do not participate any (521) further than that in the profits, losses, of the Association?

A. No, sir.

Q. And is your shareholder's interest constantly changing; that is, people putting in—getting additional shares, and new shareholders coming in, and so forth?

A. Oh, yes, day by day.

Q. There is an actual turn-over?

A. Oh, yes.

Q. Each time they get back then the dollar amount of their investment, plus the declared dividends?

A. Yes, sir.

Q. That haven't been paid to them yet at that date.

Do you reserve the power to refuse anyone's wish to become a shareholder?

A. We reserve that power, yes, sir.

Q. Is that reserved in your by-laws?

A. Yes, sir.

Q. In other words, the acceptance of membership of shareholders is an actual step that your Association has to go through in accepting a shareholder; it is a process that has to be gone through each time, is it not?

A. That is right.

Q. Now, what cash reserves and deposits are you required to keep?

(522) A. You mean by the Home Loan Bank System?

Q. Yes.

A. I mean, are you talking about 1952 or—

Q. (Interposing): Yes.

A. Generally, I think the cash in Governments at that time was six per cent, if I have a correct memory on that.

Q. Required to keep a six per cent reserve?

A. That is right.

Mr. Klein: Six per cent of what, sir?

A. Of our savings accounts.

(523) Q. (By Mr. Dexter): Will you describe your sources of capital and borrowed money?

A. As to who we—

Q. (Interposing): Your sources of capital. What are your sources of capital?

A. Well, the sources are the people in the community. You mean who we get the money from?

Q. Yes.

A. People, generally speaking, in our own community. There possibly is a few who live outside of our immediate area, but probably 90 per cent would be in our immediate area.

Q. But the source of capital would be the people that come in and become members and shareholders?

A. Yes, sir.

Q. Is that the only source of capital?

A. That is the only source, yes, sir.

Q. Do you have any sources of borrowed funds?

A. Well, yes. We don't consider that as capital, but we have borrowing power from the Home Loan Bank, of course.

Q. What evidence does a shareholder have representing his ownership?

A. He has a certificate showing that he is a member in his book.

This is a copy of the certificate that shows that he is a member, holds a savings account representing a share interest.

(524) Mr. Dexter: Let's have it marked.

A.: You may pull them off.

Q. (By Mr. Dexter): There is three of them here; is that right?

A. There is a savings book, a loan book, and the membership certificate on each one.

Q. And these were all in effect in 1952?

A. Yes, sir.

(A savings passbook and certificate were marked Defendants' Exhibit 60-A; a borrower's membership certificate and book were marked Defendants' Exhibit 60-B; a form of certificate was marked Defendants' Exhibit 60-C; and a savings account membership certificate was marked Defendants' Exhibit 60-D.)

Q. (By Mr. Dexter): Are all the savings certificates the same for all Federal associations?

A. Yes, sir.

Q. In other words, your certificates that I have had marked Exhibits 60-D and 60-C would be the same for all Federal savings and loan associations?

A. Practically. There might be a slight difference in wording, but it is practically the same certificate. I am not positive, but they could be worded slightly different; but in general, in form, it must be a regulation form and one that meets with the approval of the Home Loan Bank Board.

Q. In other words, the Home Loan Bank Board approves the nature (525) of the certificates?

A. Yes.

Q. And would the same be true with regard to Exhibits 60-A and B, which are the passbooks?

A. Yes, sir; the borrower's membership certificate, yes, sir.

Q. Those are all identical for your federal associations?

A. Yes, sir.

Q. In substance.

Mr. Dexter: I would like to offer these in evidence.

Mr. Klein: No objection.

The Court: Will one of you be good enough to tell me which is which here, now?

Mr. Dexter: I'm sorry.

Q. (By Mr. Dexter): Would you go through these four and expand for the record exactly what they are? Exhibit 60-A?

A. That's a savings passbook, and there is a certificate in it.

Q. Is that a full-paid certificate or a partial-paid?

A. No, it is recognized as a savings account, as it states.

Q. And that would be 60-A. How about 60-B?

A. That is the borrower's membership certificate and book.

Q. And what is the difference between 60-A and 60-B?

A. Well, the difference, one is a saver and one is a borrower.

Q. All right. And Exhibit 60-C is what?

A. That's a form of certificate that may be used instead of a (526) passbook.

Q. That would be for a full-paid share?

A. We don't have full-paid shares, as such. They are all savings accounts, one represented by a passbook, the other represented by a certificate. The only difference is that the passbook may be added to from time to time; the certificate can't. You have to issue a new one each time.

Q. Basically they are the same thing?

A. Exactly the same—have the same standing.

Q. And 60-D is what?

A. That is the savings account membership certificate.

The Court: They have been offered?

Mr. Dexter: That's right.

The Court: And they are received.

Q. (By Mr. Dexter): As I understand it, you do require a financial statement from a borrower before loaning money to him?

A. Yes, sir.

Q. You also require him simultaneously to become a member?

A. Yes.

Q. Do you know what percentage of your loans are made to individuals?

A. You mean other than corporations?

Q. Yes, other than corporations.

A. It is a very rare exception when a corporation borrows money from us. I would say at least 99 per cent are loaned to individuals.

Q. In other words, only one per cent would be loaned to corporations or other business entities?

A. Other than individuals. I don't know whether it is one per cent. It would be so low it might be less than one per cent.

Q. A very minor portion?

A. Very, very small portion.

Q. Do you loan any money to finance companies?

A. No, sir.

Q. What percentage of your loans are secured by mortgages on farm and residential property?

A. Well, they all are.

Q. 100 per cent of your loans are secured in that manner?

A. Well, now, of course, a slight variation might be an improvement loan, an FHA improvement loan to

modernize a home or repair it. That doesn't have a mortgage in it.

Q. But the security behind the improvement loan would be what, then?

A. That is merely a promise to pay.

(528) Q. Do you make any unsecured loans on the strength of a borrower's financial statement?

A. No, sir, except this improvement loan to his home, which is insured by FHA generally.

(529) Q. Do you make any straight mortgage loans?

A. By straight, you mean short-term loans?

Q. Yes.

A. Only for short term to builders.

Q. Just to builders, until property that is going to be security is built?

A. Yes, until permanent financing is arranged.

Q. Do you make any open-end type of loans?

A. Yes, sir.

Q. What provisions are made in your mortgage concerning pre-payment?

A. You mean can they pay the full amount?

Q. Is there any penalty in paying it ahead of time?

A. We have a penalty provision in our mortgage.

Mr. Klein: Would you say how much?

A. Yes, sir. I mean, we can waive or charge the penalty at will, but there is a penalty in our conventional mortgage up to three years of six months' interest on the balance due.

Q. What has been your practice in '52?

A. We didn't have a penalty clause in '52.

Q. Do you sell or assign any of your mortgages?

A. Yes, sir.

Q. What was the condition of that in regard to the period we are talking about; that is in 1952?

A. If I may see the statement, I can tell you about the amount. (530) It was rather small. 284 thousand.

Q. Were you attempting in 1952 to sell or assign any mortgages in addition to that?

A. Yes, sir.

Q. Why?

A. Our demand for mortgages exceeded the supply of money on hand.

Q. And in reference to that condition, what was your interest as a federal savings association in Flint?

A. Our interest was that we were interested in building the community and going along with the progress, as the progress of our community was going at a pace that our savings were unable to take care of at the time.

Q. So your interest then was trying to bring into the community that you served more money for mortgages in a tight mortgage market?

A. That is right, yes, sir.

Q. Now, once the mortgage and the mortgage note are signed by the borrower, how are the funds then made available to him?

A. Well, if it happens to be a finished house, the funds could become immediately—you are talking about how does the borrower get it or how does the seller of the property get it?

Q. How do you make it available? What are the mechanics of getting the money to the borrower?

A. He signs the mortgage, and the mortgage is set up, and if he is buying the property from somebody else, it can be disbursed (531) immediately.

If it is a house that is being built, he may take progress draws. We will have a property check on it and advance him sums at different stages of construction.

Q. Is there any direct relationship necessarily between the time the money is lent and the mortgage is taken?.

A. That is another technical question. We record the mortgage immediately.

Q. Even though you haven't loaned the money?

A. Yes. Many times the mortgage will be on the books long before any money is disbursed.

Q. Is that generally true in regard to construction type mortgages?

A. Yes. Very dangerous. You don't do it that way.

Q. In other words, then, the record of your mortgages on the books or in the register of deeds does not necessarily indicate that you loaned that amount of money in a particular period of time?

A. Well, actually you have loaned it, but you may not have disbursed it.

Q. You have committed yourself to it, but you haven't actually disbursed it?

A. That is right.

Q. From what source are your funds disbursed to the borrower?

A. Out of what account?

(532) Q. Yes.

A. Out of loans in process account.

Q. What form of draft or payment do you make to the borrower?

A. We give him our own check on our association.

Q. A check drawn on whom?

A. On the association. On a commercial bank.

Q. Drawn on a commercial bank. In other words, do you keep a commercial banking account for that purpose?

A. Yes, sir.

Q. Do you know how much there was in 1952 and what banks they were located in?

A. I can't tell you the breakdown of the bank. I can tell you the amount of cash on hand.

Q. Do you know approximately how much was in the hands of commercial banks?

A. 549 thousand, and I can't give you the breakdown.

Q. Do you know what banks they would normally be in in 1952?

A. Yes. Genesee County Savings Bank and Citizen's Commercial Savings Bank, some money with the Home Loan Bank of Indianapolis. That would be the distribution, but the dollar amount and how it is divided, I couldn't give you that.

We had an M & M, Merchant's Mechanic Bank, which is now merged with the Genesee County Savings Bank.

Q. In '52?

A. That is right. There was an account in that bank.

(533) Q. Do I understand that you didn't have any VA or FHA mortgages in '52?

A. Yes, sir, we did have.

Q. Do you charge the full rate permitted for servicing those mortgages in '52, full rate permitted by law for servicing those?

A. Yes, sir. You are talking about interest rate?

Q. That is right. Well, the charges for servicing—

A. (Interposing): Yes, sir.

Q. We are discussing the calendar year '52; what was the situation of the mortgage money market in that year?

A. Well, it was strictly a lender's market.

Q. What do you mean by that?

A. By a lender's market, that you would receive more applications than you have money or money to loan on,

and, in other words, during that year it was about for each dollar you had, you had about \$2 in applications that you could have fulfilled.

Q. Now, you stated that you had borrowed all the money that you could from the Federal Home Loan Bank.

A. I didn't say all I could.

Q. That was prudent.

A. That is right.

Q. And would you explain what you mean by that?

A. Well, you needed to keep a certain amount of credit available (534) for two things. First, you needed additional available credit in case your savings would shrink on you during this year. That is number 1.

Number 2, you needed available funds—credit available in case you were about to sell some mortgages and were awaiting the final distribution of the sale, which is a considerably long process at times. You might have a bank of mortgages built up that you were about to sell. You might need a considerable amount to keep your program going.

Q. In other words, you treated the additional ability to borrow from the Federal Home Loan Bank as part of your necessary operating reserve?

A. Liquidity.

Q. Liquidity?

A. Yes.

Q. And the reason you didn't borrow more was not because there wasn't the demand for mortgage money, but simply because to properly run your business, you needed that additional liquidity?

A. Yes, at least additional protection to take care of you over a period that—when you might be short of cash.

(535) Q. But within this limit, you borrowed the maximum that you could during 1952, bearing in mind—

A. (Interposing): By our own formula, yes, sir.

Q. What do you mean "by your own formula"?

A. Allowing for the additional amount of the liquidity to take care of future business, and being cautious enough that we wouldn't run out of money and wouldn't have to cancel commitments.

Q. That is to keep your business going?

A. That is right.

Q. Will you describe the nature and extent of governmental supervision and the governmental agency supervision of your association?

A. Yes, sir. We are supervised by examiners from the Home Loan Bank Board; that is what you mean—

Q. That is right.

A. —on the type of examinations we have. And, they examine us,—they are not directly connected with the Home Loan Bank of Indianapolis, but the Home Loan Bank of Indianapolis is a supervisory agent; they make their report to the Home Loan Bank and the Home Loan Bank then, in turn, gives you a report on the examination, citing any changes that should be made, or corrections that should be made.

Q. Are you on the Home Loan Bank Board?

(536) A. Yes, sir, I am,—the Home Loan Bank of Indianapolis, I am currently a director.

Q. What is the nature of the supervision of the Board over an association such as yours?

A. Well, they make a very thorough examination, examine all accounts, all mortgages, examine by-laws, and practically everything, to see that you are conforming to the charter and your rules and regulations; also as to the loans, whether they are within the scope of the Home Loan Bank Board regulations.

(537) Mr. Dexter: All right. The regulations that the Board puts out from time to time in regard to the purpose of your Association, and comparable associations.

A. Yes, sir, the Home Loan Bank Board, you must not confuse the Home Loan Bank of Indianapolis with the Home Loan Bank Board. The regulations do come from the Home Loan Bank Board as to what you can do and when you can do it.

Q. (By Mr. Dexter, continuing): Are those published regulations?

A. Oh, yes, yes, sir.

Q. They would be a matter of checking the regulations of those Boards in 1952 to find out what the purposes of that Board were in terms of examining and auditing the particular associations?

A. Well, they check, as I stated before, they check to see if you are within the requirements of the regulations, that is—

Q. (Interposing): That is the purpose of the examination?

A. That is the purpose. I mean, there are other added things, but that is the main purpose.

Q. Are you permitted to borrow from the Federal Reserve System?

A. No, sir.

(538) Q. As I understand it, you stated before that you are a member of the Federal Home Loan Bank of Indianapolis?

A. Yes, sir.

Q. What territory does that bank serve?

A. It serves the states of Indiana and Michigan.

Q. What agency of the Government, if any, insures your stockholders or shareholders?

A. The Federal Loan Savings Insurance Corporation.

Q. Are your shareholder accounts insured?

A. Yes, sir—all Federals must be.

Q. And under what Federal agency are they insured?

A. I just stated, the Federal Savings Loan Insurance Corporation.

Q. I see: Now, is there a difference between the Federal Savings and Loan Insurance Corporation, in reference to your Associations, and the Federal Deposit Insurance Corporation applicable to banks?

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(539) Q. (By Mr. Dexter, continuing): Will you describe just generally your principal place of operation in Flint, the kind of physical set-up it is?

A. The address is 126 West Kearsley Street, at the corner of Kearsley and Beech Street.

Q. What, generally, is the interior set-up of that office?

A. Well, the interior is composed of officers' quarters on one side, tellers, who receive payments on both savings and from borrowers, on the other side; a vault in the rear, and manager's office back of the officers' quarters, and a directors' room in the rear of that.

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(541) (By Mr. Dexter, continuing): I would like to show you Exhibit 58 and ask you if that indicates your net income for the period covered by the report?

A. Yes, sir.

Q. And is this figure, net income, after all taxes are paid by your association in 1952?

A. Yes, sir.

Q. What is the amount of that? Could you read that figure—it is pretty well blurred?

A. \$224,496.57. That does not include the payment of dividends, however—before dividends.

Q. Now, when did you say you came with the Savings and Loan Association that you are now associated with?

A. December of 1944.

Q. And what did you do prior to that time?

A. Immediately for the two years before that I was in the Army for a short time, and worked for the Buick Motor Division during this two year period. For the twenty years previous to that I worked for a commercial bank in Flint, Genesee County Savings Bank.

Q. How long did you work for a commercial bank in Flint?

A. A little over twenty years.

Q. Are you currently a stockholder in a bank?

A. Yes, sir.

(542) Q. Are you currently a shareholder in a savings and loan association?

A. Yes, sir.

Q. Will you answer this: What are your present connections with savings and loan associations?

Now, understand you are a member of the Federal Home Loan Board, is that correct?

A. That is correct.

Q. And do you have any other association connections outside of your job, and that particular position?

A. No other savings associations, no, sir.

Q. Did you hold any official position in 1952 with any association?

A. Other than the one I am with?

Q. Yes.

A. No, sir.

Q. I use the word "association"; I do not mean a particular building and loan association, but maybe an association of building and loan associations?

A. Oh, I misunderstood the question. You mean in a trade organization?

Q. That is right.

A. Yes, I was a member of the Board of Directors for the Michigan Savings and Loan League for six years, and that would have included 1952.

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(544) Q. (By Mr. Dexter, continuing): Would you state the nature of your experience for twenty years with the banking business?

A. During that period of time, generally what I did?

Q. That is right.

A. I was branch manager for several years at one of the Genesee County Savings Bank branches and later was manager of the savings department for the same bank.

Q. And in that capacity were you able to familiarize yourself with banking businesses and practices generally?

A. Yes, sir, generally.

Q. Did your duties and functions of your offices held require you to become so familiar?

A. Yes, sir.

Q. Now, in reference to your present job with your own association, are you familiar with its operations?

A. Yes, sir.

Q. Are you familiar with the nature of investments made in national banks by shareholders?

A. Now, let me get that. Let me understand it.

Q. Let me ask you this: Are you familiar with the capital structure of banking associations?

A. Generally, yes, sir.

Q. Are you familiar generally with the capital structure of savings and loan associations?

A. Yes, sir.

(545) Q. Do you know generally the sources of their capital?

A. —Yes, sir.

Q. The kind of activities they engage in?

A. Yes, sir.

Q. Can you state generally the nature of the business of savings and loan associations as you have found out through your own experience?

Mr. Klein: Generally, or this particular one?

Mr. Dexter: Generally.

Mr. Klein: Throughout the United States?

Q. (By Mr. Dexter): As I understand it, your experience has been limited primarily to the Flint area. Is that correct?

A. Yes, sir.

Q. And you are closely familiar with the operations of both banks and savings and loan associations in that area?

A. Yes, sir.

Q. Also, you are familiar generally, through your connections with the Home Loan Bank Board and the Savings and Loan League, with the general operation of the savings and loan institutions within the State of Michigan?

A. Yes, sir.

Q. Will you state the nature of the business of savings and loan associations in the State of Michigan?

A. They are thrift and home financing organizations.

(549) Q. (By Mr. Dexter): Let me ask you, sir, whether there has been any change in the character of federal and state savings and loan associations since 1933?

A. Well, I can speak for federal savings and loan associations positively. The only changes have been minor mechanical changes as to charter, are you referring to, or—

Q. (Interposing): Well, their basic purposes, what they do?

A. The basic purpose hasn't changed.

Q. Do they serve generally the same class and kind of people they have always served since '33?

A. Yes, sir.

Q. Do they make the same kind of loans that they have always made?

A. Yes, sir.

Mr. Klein: Are you talking for all of them, or just your own?

Mr. Dexter: He is familiar, I believe—

(550) Mr. Klein (interposing): I am asking the witness.

The Court: Let him answer the question, and if you want to object to it, I will make him wait until the answer.

Mr. Klein: I'm sorry, sir.

Mr. Dexter: I assume he is qualified in the area of Michigan, which is the broadest scope—

The Court (interposing): You can ask the question knowing from what he speaks. You can ask the question if you wish.

Q. (By Mr. Dexter): Your experience, as I understand it, in regard to federal savings and loan would be in reference to Michigan and Indiana?

A. Yes, sir.

Q. As I understand, being President of the Michigan Savings and Loan League, you became familiar with both the state and federal associations, their purposes and their problems, and so forth?

A. Yes, sir.

Q. That was the function of the office, was it not?

A. Yes, sir.

Q. So that you can speak generally as to both associations in Michigan in terms of their basic character and the kind of business they have done from 1933 to date?

A. Yes, sir.

(551) Q. And as to those kind of associations in Michigan, there has been no change in their basic purpose or function?

A. No basic change. Very slight mechanical changes.

Q. For example, the membership arrangement in terms of certificates has been the same?

A. That's right.

Q. The type of business—that is, the mortgage activity—that has been the same?

A. That's right.

Q. The other details of what you do as a savings and loan association have been the same?

A. Yes, sir.

Q. The kind of appeal you make for getting shareholders interested in your organization has been the same?

A. Yes, sir.

Q. In fact, when some of these associations were started originally, wasn't it more difficult to get participation than it is now?

Mr. Klein: Now, just a moment. What time are you talking about now? What period of time by date?

Mr. Dexter: Well, prior to 1952.

Mr. Klein: Well, how long prior?

Mr. Dexter: As I understand it, Mr. Klein, we go back from—

Mr. Klein (interposing): Do you want to go to (552) 1890 or 1870? Let's start at some starting point. That is all I wish to have on the record.

The Court: We are talking about federal savings and loan, are we not?

Mr. Dexter: Yes.

The Court: And they started in what year?

A. 1933.

Mr. Dexter: So we will use 1933, Mr. Klein, as the date.

Would you read back the question?

(The last question was read by the reporter.)

Q. (By Mr. Dexter): That is, in 1933.

A. Well, yes, due to the economic conditions, certainly.

Q. I believe you have testified that the nature of shares in savings and loan associations has not changed since 1933?

A. Except mechanical changes. They are now defined as savings account represented by a share interest. I think the wording is slightly different.

Q. Basically, the statutory references and regulations and actual practice have been identical?

A. That is right.

Q. And they serve the same type of people?

A. Yes, sir.

Q. In terms of investments in the institutions and the kind of people who are the borrowers?

A. Yes, sir.

(554) Q. (By Mr. Dexter): Let me ask you this. Who are your competitors? Who are your competitors for obtaining share investments? Who are your competitors?

A. Well, we have many. You are talking about the consumer's dollar?

Q. That is right.

A. He has so many dollars to distribute?

Q. That is right.

A. Automobile companies is the greatest competitor. You could go down the line to washing machines, furniture, sale of homes, and all other things that the consumer buys or splits up his dollar. The biggest one, as I say, in our area particularly, is the automobile.

Q. In other words, by "competitor" you mean someone who is taking (555) the consumer dollar away from possible investment in your association?

A. That is right.

Q. And it would include any kind of economic activity which requires the expenditure of purchasing power?

A. Yes, sir.

Q. And it has been that way in 1933, and it has been that way to date?

A. Yes, sir.

Q. And has your relationship in regard to that kind of competitive condition for the economic dollar changed one iota since 1933 to 1952?

A. No, sir.

(557) Q. (By Mr. Dexter): Did you have any industrial mortgages in '52?

A. No, sir.

The Court: I would like to a certain extent shorten this up. Some of these questions we ask of every witness, it seems to me the answer must be obvious.

Are you permitted to make out industrial mortgages?

A. No.

The Court: Is any building and loan or savings and loan permitted to do so?

A. No federal and no industrial as such. I mean, they might make a mortgage loan to a corporation on their building, but strictly as an industrial loan, no.

Mr. Klein: There is testimony, sir, in deposition which we will show where there have been commercial loans up (558) to a quarter of a million dollars or more by some associations.

The Court: Very well, if there is an opening there, go ahead on both sides. I just don't want the same question asked every time if we can avoid it.

Re-direct Examination

By Mr. Klein:

Q. What do you mean by industrial as compared with commercial? Is there a difference in construction?

A. He asked me a question about the industrial loan, that there was a loan made to an industry on their—

Q. (Interposing): On a factory?

A. No, not a factory. On their statement, an unsecured loan to a factory.

Q. But it is within the power of the association to make a mortgage loan to a corporation secured by its factory or store building, or things of that kind?

A. There are certain qualifications. I am not sure about the factory. They can on the store building.

Q. And they have made such loans?

A. That is possible.

Q. Your association has made such loans in its history?

A. Our association, I don't know whether we made one or not. I don't think so. Generally we only make home mortgages.

(559) Q. That is your principal business?

A. Yes.

Q. You do make loans for other purposes? You so testified this morning.

A. Yes.

Q. Well, to get to some of the questions, Mr. Dexter asked you whether the investor share could be assigned without your consent. Do you know of any instance where such assignment was refused by your association?

A. I don't know whether we have ever had the actual—usually if there is a transfer of funds, the person transferring it comes into the office and withdraws his account and a new account is started. That is his procedure.

Q. But do you know of a single instance where any request of an assignment of shares has been refused by your association?

A. No, I do not.

Q. Do you know of any instance when any person seeking to make an investment with your association was refused the opportunity to make an investment?

A. No, sir.

Q. In other words, anyone who came with his money could make an investment and become a shareholder?

A. Yes.

Q. And then he became a member?

A. Yes, sir.

(560) Q. Although you reserve the power to reject anyone if you wanted to?

A. Yes.

Q. But you never have exercised that power?

A. You are talking about our association?

Q. Your own association.

A. No, sir, we never have.

Q. Now, a shareholder has a certain number of votes, does he not?

A. Yes, sir.

Q. How many is the maximum, and how is the vote determined?

A. I testified that he has one vote for each hundred dollars, up to a maximum 50 votes.

Q. But a member borrower has no vote?

A. No, he has the same.

Q. How about a borrower?

A. A borrower has the same number of votes if he wishes to exercise it.

Q. He has the same number of votes. Would you show me that in your by-laws, please?

A. I think it so states.

Q. I will come back to that later. Now, you are familiar with the terms of the FHA mortgage, are you not?

A. Yes, sir.

Q. The mortgage form?

(561) A. Yes, sir.

Q. And your association issued or obtained loan money that was secured by FHA mortgages in '52?

A. Yes, sir.

Q. And banks which loan money secured by FHA mortgages use the identical form of mortgage, don't they?

A. Yes, sir.

Q. And the same applies to veteran's mortgages in '52, does it not?

A. Yes, sir.

Q. Isn't it true that you have had extensive experience in the mortgage loaning business?

A. Yes, sir.

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(562) Q. (By Mr. Klein): Do you know the forms of mortgages and the lending powers of various institutions lending money on mortgages in the Flint area?

A. Yes, sir.

Q. And you know what the banks' lending powers are as a company which also lends money on similar types of mortgages? You do, do you not?

A. Yes, generally.

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(563) Q. (By Mr. Klein): Now, in connection with your loaning on mortgages, are many of your investors borrowers in comparison to the total number of borrowers dollarwise?

A. No, sir.

Q. A very small amount of your borrowers dollarwise are investors in shares; isn't that correct?

A. That is correct..

Q. And so when a person invests in shares in your institution, he does so for a profit to get dividends, does he not?

A. Yes, sir.

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(564) Q. (By Mr. Klein): Was it the practice of your association in 1952 and prior to endeavor to earn as much money for its investors as was consistent with good, sound practice in the operation of the mortgage business?

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A. Could I tell you the purpose?

Q. No, I am asking you what your practice was.

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A. That is difficult to answer yes or no.

Q. (By Mr. Klein): Did you endeavor in operating your company in 1952 to earn as much dividends for your shareholders as was consistent with good, sound business practice in (565) running the mortgage business?

A. Well, that is the same question.

Q. If you can't answer it, say you can't answer it.

A. I can't answer it.

Q. Did you in 1952 have a different obligation to your shareholder investors than you had to your borrowers, in running your business?

A. Well, how do you mean, by obligation?

Q. Well, all right. What did your borrowers do from you other than borrow money, secured by a mortgage?

A. Well, they became a member.

Q. Yes, and that is all?

A. That is right.

Q. They paid nothing to become a member?

A. That is right.

Q. And then you have testified that most of your shareholders were not borrowers as far as total amount of borrowings were concerned?

A. That is right; you said a small percentage.

Q. A small percentage?

A. And I say that is correct.

Q. And those who were not borrowers were interested in dividends, isn't that correct?

A. Yes, sir.

Q. And the more money you earn the more dividends would be (566) available for your shareholders?

A. Well, I cannot answer that yes or no either.

Q. Well, you have consistently increased your dividend rate, have you not?

A. Yes, sir.

Q. And it is now three and a quarter per cent?

A. Yes, sir.

Q. Now, Mr. Dexter asked you about competition for the shareholders' investment dollar, and you talked about various groups that were competing for that investment dollar, like auto companies, washing machine companies, or, washing machines. Would you include savings in commercial banks in that class, competing for the dollar available?

A. Well, yes, there are many classifications; I did not want to—

Q. (Interposing): Yes, but is that one?

A. That is right.

Q. And would a person who is investing in shares in your association be put to the decision of whether he wished to become a shareholder in your association, with no guaranteed rate of return, as contrasted with his depositing money in a commercial savings bank at savings interest rates guaranteed by the bank?

A. Well—

Q. (Interposing): If you know, say so; if you don't know, (567) say so.

A. Well, I mean that would make too long again. I cannot answer yes or no.

Q. You answer it the best you can, sir.

A. He might include more things, possibly, than the rate involved. He might like to do business with the association. He might know some people that are with our organization. There might be many more reasons than just the rate alone. Probably the rate is favorable to him. The location of the office might be favorable to him.

Q. Would the dividend rate be an important factor, rate of return that he received on a share in the investment in the savings and loan association?

A. I think that is always important.

Q. You think that is a very important factor, isn't it?

A. Sure, yes.

Q. And, therefore, the more you are able to earn from your mortgage business, and pay higher dividends, the more you are able to attract from savings accounts of commercial banks?

A. Well, not necessarily. You do have a legal—or a reserve for losses that you must set up. I mean, there isn't all that difference that could be distributed to savers; I mean you have a prescribed amount that you must set aside.

Q. Do you know whether your rates in Flint, rates of dividend in (568) 1952 were higher than the commercial banks savings rates in 1952?

The Court: You misspoke.

Mr. Klein: 1952 in both cases.

A. 1952?

Q. (By Mr. Klein, continuing): Yes.

A. We were slightly higher.

Q. And are you of the opinion, experienced in your business, that that accounts for the increase in your investment share accounts?

A. Not entirely.

Q. It is an important factor, you say?

A. It is a factor.

Q. Is it an important factor, the rate of return?

A. A saver is interested in getting as much as he can.

Q. Right. And, do you know about the degree of increase in shares in savings associations from 19—well, just take the period you were in—from 1944 through 1952, of your own association?

A. Our records will show that we had eight million at the end of 1952; and the records will show, I think maybe three million or three and a half million in—1942, did you say?

Q. In 1952; from 1944 to 1952.

A. Oh. We increased from a million and a half in 1944 to the (569) figure here of eight million at the end of 1952.

(570) Where did you get your knowledge about Federal Savings and Loan Associations from 1933 until 1944; you were not connected with any, were you?

A. No, sir; only by the reading of regulations.

Q. But did you know how they operated during that period, of your own knowledge?

A. Well—

Q. (Interposing): Between 1933 and 1944, when you started with your Association?

A. Generally, by reading the regulations, yes, sir.

Q. Not otherwise?

A. No—not by actual experience, no, sir.

Q. Or knowledge?

A. Just by—

Q. (Interposing): Reading the regulations?

A. —reading the regulations.

Q. Yes, sir. So you do not have any first-hand knowledge or (571) information about the character of the operation of savings and loans during that period, except as you read from the regulations?

A. And knowing of the changing regulations, and the few changes—

Q. (Interposing): You are talking about changes in regulations only when you say there have been no changes from 1933 to 1952?

A. Well, the only mechanical—slight changes; they asked me about a basic change, and I said there had been none.

Q. And when you were talking that there was no basic change in regulations, or statute—

A. (Interposing): That is correct.

Q. —you were not talking about actual practice?

A. No, sir, about the basic—

Q. (Interposing): Law; Yes, sir. Now, in 1944 when you started with the Federal Savings and Loan Association of Flint, did you know whether or not at that time this bank, Plaintiff bank, the Michigan National Bank, was permitted to make mortgage loans under the FHA for twenty years?

* * * * *

(573) Q. Mr. Parker, I think you described the 1952 money situation as being a lender's market.

When you are in such a market, your association, is it not true that your association then can be more selective to secure the most safe and the highest type of mortgage as security for your loan?

A. Yes, sir, you are in that position.

Q. And you practiced that means of selectivity in 1952, did you not?

A. Yes, sir.

Q. And your loaning basis—that is, the basis of the amount of loan towards the valuation—was partly the product of it being a lender's market in '52; isn't that correct, sir?

A. That bears on it, yes.

* * * * *

(574) ROYER, LELAND W., was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

The Court: Would you give your full name to the reporter.

A. W. Leland Royer.

Q. (By Mr. Klein): Mr. Royer, you are an officer of a building and loan association or a savings and loan association?

A. Savings and loan.

Q. What is the name?

A. Calhoun Federal Savings & Loan.

Q. And what is your position with the Calhoun Federal Savings & Loan?

A. President.

Q. And how long have you been President, sir?

(575) A. Since '42.

Q. And were you connected with the association before that?

A. Yes.

Q. In what capacity, sir?

A. In various capacities—bookkeeper and loan officer and various capacities before that time.

Q. How long?

A. Since 1924.

Q. And when was the Calhoun Federal Savings & Loan Association organized?

A. 1919.

Q. And was it a Federal Savings & Loan Association in 1919?

A. No. Federals didn't come into existence until '33.

Q. It became the successor to the state association?

A. Right.

Q. And what was the original capital in 1919 of the Calhoun Federal Association—or the Calhoun Savings Association?

A. Well, at the start they raised about 150 thousand.

Q. And do you know what it was as of December 31, 1952?

A. I have the statement here.

Mr. Klein: Well, maybe we can mark those things.

A. It was 12 million—12 million 349.

Q. (By Mr. Klein): Do you also have with you the published reports of your association for the period from 1947 to 1952, inclusive?

(576) A. Yes (handing documents to Mr. Klein).

Q. And were these published in the newspaper also?

A. Some years yes and some years no back. We put the statement out each year.

Q. For these particular years, I am talking about.

A. I couldn't say that far back.

Q. Wasn't the '52 one published?

A. I couldn't swear as to that.

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Q. (By Mr. Klein): Mr. Royer, in your capacity as President of the association—and you were President from '47 through '52, I believe you said?

A. Yes.

Q. Briefly, what were your responsibilities and duties?

(577) A. Well, generally that of the President, running the whole organization. I have had, of course, others who did a lot of the detail work.

Q. And subject to the overall policy of the Board of Directors?

A. Of the Board of Directors.

Q. You were the chief executive?

A. Right.

Q. And you carried out the policies as to the making of loans and the policy about seeking investment shareholders?

You are shaking your head "Yes"?

A. Yes.

Q. And did you have charge or overall responsibility for the financial records?

A. Yes.

Q. I show you documents marked 61-A through 61-F, inclusive, and ask you if they are the annual financial statements of your association for the period ending December 31, and 1947 is 61-A, B is 1948, C is 1949, D is 1950, E is 1951, and F is 1952.

A. Yes.

Q. And were these annual reports—do they correctly reflect the entries on the books and records of the association, and do they truly and correctly reflect the condition of the association as of each of those periods respectively?

A. They do.

Q. They do?

(578) Right.

Q. And were these statements 61-A through 61-F, inclusive, prepared by the association in the regular course of its business, and was it the regular course of its business to prepare such statements of conditions and to publish them to its members?

A. That's right, yes, sir.

Q. And was there any requirement of Federal law that they be either published or mailed to shareholders?

A. The alternate—either published in the newspaper or mailed to the members.

Q. And were these statements 61-A through 61-F, inclusive, mailed to the members pursuant to that requirement?

A. They were either mailed or published in the paper.

Mr. Klein: I would like to offer Exhibit 61-A through 61-F, inclusive.

Mr. Dexter: I would object, your Honor, to the admissibility of these reports as not being just the reports. There is other information contained on them—advertising.

No objection to the balance sheet, as such, if he testified—

The Court (interposing): There is no objection to the balance sheet, as such?

Mr. Dexter: But there are footnotes and there is advertising material on the back.

(579) The Court: I assume it is the balance sheet that you are offering?

Mr. Klein: Primarily at this time. If I wish anything else, I will direct an inquiry. Of course, the footnotes on the balance sheet are part of the balance sheet. I haven't seen what they are, but I assume that is true of balance sheets.

Mr. Dexter: To the extent—and I assume that the witness's testimony verifies and goes only to the balance sheet portion of it—and to the extent, we have no objection, except our objection as to materiality, and particularly that pertaining to years other than 1952.

(580) The Court: The balance sheet part of the Exhibit 61-A to 61-F, inclusive, is in each case received.

Mr. Dexter: Plus our continuing objection that your Honor has stated with regard to these—

The Court (interposing): That is right, under the same conditions as other like exhibits.

Mr. Dexter: The other federal savings and loan balance sheets.

Q. (By Mr. Klein): Mr. Royer, I show you a document marked Exhibit 62 and ask you what that is, sir.

A. That is our annual report to the Home Loan Bank Board.

Q. For what period?

A. For the year 1952.

Q. And is this a pencil copy of the original from which the original was prepared?

A. From which the original was prepared.

Q. And did you in the regular course of your business and as a part of the regular course of your business prepare such report and file it with the Home Loan Board?

A. Yes.

Q. And does it truly and correctly reflect the condition of the association and the other facts therein contained as appear on the books and records of your association?

A. It does.

Q. And did you swear to the original before filing as being (581) correct?

A. I did.

Mr. Klein: I should like to offer Plaintiff's Exhibit 62 in evidence.

Mr. Dexter: We have the same objections, your Honor, as we did to comparable exhibits of other associations and assume that it is going to be admissible subject to your conditions.

The Court: That is right. It is received subject to the same conditions as previous like exhibits.

Q. If the attorney general and his staff wish to check the correctness of either Exhibit 61-A through F, inclusive, or Exhibit 62, would you be agreeable to having him do so at (582) your association office, if he elects to do so?

A. That could be arranged.

Q. (By Mr. Klein): You said, I think, as of 1919 the association started with \$150,000?

A. Yes.

Q. And according to Exhibit 61-F, you had total assets, including reserves and surplus, of \$12,349,000?

A. That is right.

Q. Of which savings accounts or shareholders accounts were \$10,512,000, in round figures?

(583) A. That is right.

Q. Now, I suppose your charter and by-laws as a federal association are standard with all charters and by-laws under the regulation?

A. Yes, sir.

Q. (By Mr. Klein): Now, referring to plaintiff's Exhibit 62, Schedule 6, as of December 31, 1952, it appears that you had 8,085 certificate or investor shareholders; is that correct?

A. That is right.

(584) Q. And they had an aggregate investment of \$10,512,930.98?

A. That is right.

Q. Did any investor in 1952 have to be a member prior to his becoming an investor?

A. I don't know whether prior. They are simultaneous.

Q. And did your association advertise for investors or savings investors?

A. We have, yes.

Q. Did you in 1952?

A. Yes.

Q. And did you advertise pretty extensively in 1952 for shareholder investors?

A. Well, pretty steady rate. We have always.

Q. What media did you use, sir?

A. Newspaper and radio mainly. Some direct mail, some pamphlets.

Q. And how often did you have advertisements in the newspaper?

A. Well, we have run a couple times a week.

Q. And on radio?

A. Spots, occasional spots on the radio.

Q. And did you seek to obtain as many shareholder investors in '52 as you could?

A. We did.

Q. Do you recall whether or not in 1952 or at any time you ever rejected anyone who sought to become a shareholder with your association?

(585) A. Yes, we have.

Q. How many instances?

A. I don't know if it was in '52.

Q. How many instances do you recall, sir?

A. Very few. I recall one or two in particular.

Q. And do you recall the reasons for that?

A. Because the people had been members before and were objectionable.

Q. Other than that one or two, you have never rejected any person who sought to become an investor?

A. That is true.

Q. And as far as assignment of evidence of shareholder, did you ever reject any request for assignment or transfer?

A. No, but as in previous testimony, we have—I don't recall any occasion where they have been assigned except to the bank for security when they would make them a loan.

Q. But you never have had occasion to reject a request at all?

A. I don't think I have had any occasion to reject one.

Q. And certainly you would not have any different standards in passing upon requests for transfer than you would in passing upon applications for new shareholder investments?

Mr. Dexter: Your Honor, if they never had one, I doubt if they have any particular standard set up, other than what would be contained generally in their by-laws.

The Court: The witness can tell us:

(586) A. It is transferable only on the books of the association. For that reason, there just never is an occasion to do it. We have had occasion where people want to borrow from the bank and put up our passbook as security, and those are the only cases I know of where we have accepted an assignment, which was an assignment for collateral rather than actual ownership.

Q. You never had occasion to decide whether you wanted to reject any request or not?

A. That is right.

Q. Do you have any of the forms of ownership that are used to indicate ownership of shares in your association in effect in 1952?

A. I just brought one book along because they are all the same.

Q. I will show you Plaintiff's Exhibit 63 and ask you if it is the type of passbook, savings passbook, and containing the membership certificate, which you described was in effect in '52?

A. That is right.

Mr. Klein: I would like to offer Exhibit 63 in evidence.

Mr. Dexter: Did he say this was in effect in 1952?

Mr. Klein: Yes, he did.

(587) The Court: That is the passbook and contains the certificate?

A. That is right, passbook and a certificate and fly-leaf.

The Court: That would be for a savings account?

A. Yes.

The Court: Not a pre-paid or fully paid?

A. We use the same form, but this exhibit is only for the savings. I didn't bring any of the others along.

Q. (By Mr. Klein): But the certificate is essentially the same?

A. Yes.

Mr. Dexter: Is the information, for instance, on the back identical in 1952?

A. I am not sure about that. That is something we either copied from the old one when we get new ones made up, or make a new draft.

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The Court: Received.

(588) Q. (By Mr. Klein): And a person who invested in shares of your association was not a creditor of your association, was he?

A. No.

Q. Did the association agree to pay him any fixed rate of interest?

A. No.

Q. Did you agree to pay him any fixed rate of dividend?

A. No.

Q. What was the rate of dividend paid in 1952?

A. In 1952 we were paying 2%.

Q. And what is the rate paid at the present time—subject to the special record.

A. Three and a quarter per cent.

Q. And has the dividend rate continuously increased?

Mr. Dexter: Would you state from what?

Q. (By Mr. Klein): Up to '52.

A. No, we have gone up and gone down as economic conditions warranted.

Q. And therefore if you made more money in the mortgage business, why, you were able to pay a greater rate of dividends in your business?

Mr. Dexter: Your Honor, he never asked him if he made any money in his mortgage business.

Q. (By Mr. Klein): What was your principal business, sir, in 1952 and prior years?

A. Receiving savings share accounts to raise the money to loan for home loans, encouraging thrift, and promoting home ownership.

Q. Now, we will get into that in just a minute, sir. Did a person have to be an investor in shares in order to be a borrower from your association?

A. Not an investor in shares, no.

Q. And did an investor in shares have to be a borrower from your association? He was not required to borrow?

A. No.

Q. And did a borrower who came to you for mortgages or from whom you sought mortgages in '52 or prior have to be a member before he actually made the loan, or was it simultaneous?

A. Simultaneous.

(590) Q. (By Mr. Klein, continuing): Who did you seek out as far as economic class levels, to make loans to?

A. We didn't seek anyone out.

Q. Well, to whom did you make the loans?

A. To the people that came to us and asked for them.

Q. Did you try to make loans?

A. Our experience has been that we have always been advertising and looking for savings and never have been looking for loans—more than we could handle.

Q. But there were certain years that you made more money in your mortgage business on loans than in other years, isn't that true, sir?

A. That is true.

Mr. Dexter: Your Honor, this question is not limited in any way as to the time.

Q. Up to 1952, and including 1952 that we had surplus funds on hand, during the war, when we couldn't put them out.

Q. And you sought to put them out so as to earn money for your investors?

(591) A. We didn't want to put them out at that time; we bought Government bonds.

Q. You have sought to make as much money for your investors as you could throughout, haven't you, consistent with good business practice?

A. That is part of the business, yes.

Q. In other words, the investors are interested in returns on their investments, aren't they?

A. That is true.

Q. And the more you make in loaning money, or in the operation of your business generally the more return is available for dividends for your investors?

A. I think that is generally true, but—

Q. (Interposing): Yes, sir.

A. —but the character of our business, from time to time the Board determines the policies, and they feel we have just as much obligation to the borrower as to the saver.

Q. Well, let's see what your obligation to the borrower is. The borrower comes to you to borrow money, does he not?

A. That is right.

Q. And you have various types of mortgages on which you loan money, isn't that correct, sir? And I am talking for the period up to and including 1952?

A. Yes.

Q. On what do you determine whether you will grant the loan; (592) what are the factors?

A. Well, the factors, we have consistently had a variable interest rate five or six per cent, and we have tried to determine the loan on the basis of the hazard to the association.

Q. And when money was tight you could be more selective than when mortgage money wasn't tight?

A. We could be more selective, but we still had the five per cent and six per cent rate through all the time.

Q. But you were more selective when the mortgage money market was tight?

A. Naturally, we would pick the lower percentage loan.

Q. And you would get more security for your loan in appraisal value, would you not?

A. We would get more security.

Q. And in 1952, was that a tight money market?

A. I don't remember in fact exactly in 1952 whether it was or not.

Q. What was the average ratio of mortgage to appraised value employed in 1952, in granting loans?

A. I am not sure of 1952, but consistently our ratio has run around 50 to 55 per cent.

Q. Yes.

A. Or—yes, 50 to 55 per cent of selling price.

* * * *

(593) Q. What was the permissive ratio of loan to appraisal value?

A. 75 per cent.

Mr. Dexter: I think he said, your Honor, that the 50-55 per cent was to the selling price and not appraisal value, and the other testimony has been related to appraised value. Now, there is a substantial difference there.

Mr. Klein: Well, I don't know if there is.

Q. (By Mr. Klein, continuing): Is there a substantial difference, sir, and, if so, please describe it?

A. Our appraisal—we try to base that on market price, which is selling price, and it is our judgment of whether—in our appraisal, whether the market price is right or not. Sometimes we are lower and sometimes we are higher.

Q. Right. Now, I see in Schedule 2—oh, did you have investors of all economic class levels, investors I am talking about, in shares, in 1952?

A. Yes, but the majority were the smaller; our average account is rather small.

(594) Q. Did you put a limit to the amount of your investment?

A. The Board has determined that from time to time. I think at that time they were limiting it to \$25,000.

Q. \$25,000; you would call that small, would you?

A. No, we would call that large, and we didn't have many like that.

Q. I see. And, did you have as investors trustees of estates in 1952, and before?

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A. I don't know whether we had—we have at different times had somebody that would sign as a trustee, but very seldom.

Q. (By Mr. Klein, continuing): Did you have corporations as investors?

A. We have had from time to time.

Q. Yes. And, did you have various charitable organizations investing funds as investors?

A. Yes.

(595) Q. And did you have professional men as investors?

A. Yes.

Q. Did you have business executives as investors?

A. Yes.

Q. In fact, you sought investors from any—I will strike that. Did you seek investors from the public in general?

A. Yes.

Q. And the more investors you had, the better you liked it?

A. Yes.

Q. And the more money they would invest, the better you would like it—

A. Yes.

Q. —within your limitations and ceiling isn't that correct?

A. That is true.

Q. And how many votes did the investor have?

A. Fifty, a maximum; the same as the other testimony, one for each hundred or fraction of a hundred, with a maximum of fifty.

Q. What were the standards by which you determined the granting or denial of loans in 1952, secured by mortgages?

A. Well, we followed—after appraisal we determined the percentage of that appraisal we would go, depending upon the person's ability to pay and the security of their job.

Q. You got the financial statement of the applicant?

A. That is right.

(596) Q. And you also determined what his income was? You are shaking your head "Yes, sir"?

A. Yes.

Q. And you determined his general character, I suppose?

A. Yes.

Q. Now, according to Schedule 2 of Exhibit 62, there is an analysis of the first mortgage loans made by your association during the year 1952, is that correct, sir?

A. Yes.

Q. And it shows 716 mortgages, for an aggregate of \$3,009,625?

A. That is right.

Q. Now, under the first column, it shows that there were 48 construction mortgages, for \$261,800, is that correct, sir?

A. That is right.

Q. And it shows 159 mortgages in the aggregate of \$940,675?

A. That is right.

Q. It shows no mortgage for refinancing, is that correct?

A. That is right.

Q. And then it shows 509 mortgages, for an aggregate of \$1,807,150 for other purposes?

A. That is right.

Q. What were those "other purposes"?

A. We didn't— if a person had ample security, we didn't always question them as to what they were going to use the (597) money for. So we didn't keep a record of for what purpose they were borrowing the money.

Q. It could be for buying an automobile?

A. It could be.

Q. It could be for going on a vacation?

A. Yes.

Mr. Dexter: Your Honor, I think the witness has stated he didn't know for what purpose it was, so I suppose it could be for the rest of the night—for anything.

Q. Do you know what is meant by "other purposes"?

A. Well, we put down in that category any loan that we didn't know was to buy a home or to build a home.

Q. Now, what, in your long experience with this association, Mr. Royer—you have had quite a lot of contacts and understanding with and of the mortgage-loaning business, have you not?

A. Yes.

Q. And in the year 1952 what other institutions were loaning money in the Battle Creek area, where you were loaning money, secured by homes, do you know?

A. Well, the other—there is another savings and loan there, and there were commercial banks; there were insurance companies; individuals; different ones that were making mortgage loans.

(598) Q. Do you know whether or not during that period in 1952 the Michigan National Bank was making mortgage loans secured by residences and homes?

A. I don't know for a fact they were; I know at different times they have sent people to us because they were not making them.

Q. Do you know at any time that you had refinanced a loan they had?

A. We have done that at times.

Q. And are there times they have refinanced a loan which you had?

A. That is right.

Q. And that was in 1952 and prior?

A. I don't know about the particular year, but I imagine that was true in that year.

Q. And you know, do you not, that they were loaning money on the same type of property you were loaning money on, secured by mortgages, in 1952?

A. I don't think so; I think at that time they were making mostly FHA, which we were not making.

Q. FHA are longer term mortgages than you are making, aren't they?

A. They can be; some of them are allowed to be made longer.

Q. What was the average term of your mortgages, sir?

A. Up to 1952, our average term was ten to fifteen year maturity.

(599) Q. Yes. And, that varied from ten to fifteen years, you say?

A. Yes, depending on the particular case.

Q. And you had monthly amortization?

A. That is right.

Q. Do you know whether or not the Michigan National Bank made conventional mortgages; is that the type you made?

A. Yes.

Q. Do you know whether they made conventional type mortgages in the Battle Creek area in 1952?

A. I don't know whether they did in 1952 or not.

Q. Did they make them before 1952?

A. I imagine they have; there have been different times I have known of them making them right along; they historically leaned toward the FHA and government-secured mortgages.

Q. Did you make veteran mortgages in 1952?

A. Yes.

Q. Secured by homes?

A. That is right.

Q. And do you know whether or not the Michigan National Bank made that type of mortgage in the Battle Creek area in 1952?

A. I don't know about 1952, but I know they did not make them for quite a while when we were making them.

Q. You wouldn't say they didn't make them?

A. I don't know about 1952, whether they were making them yet (600) then or not.

Q. But you do know that they made mortgages which refinanced mortgages on homes?

Mr. Dexter: I think he said he did not.

Mr. Klein: I think he said he did, and I want to make sure.

A. Yes, we have given them discharges and they have come over to pay us off, and they have given us discharges and paid us off.

The Court: This is refinancing of a Michigan National Bank mortgage?

Mr. Dexter: Did you do that in 1952?

A. No, I don't know if we did it in 1952.

Q. (By Mr. Klein, continuing): Did you do it prior to 1952?

A. I imagine we have; I don't know the dates.

Q. Isn't it true that in 1952 your Association made mortgage loans as high as \$30,000?

A. You mean to one individual?

Q. Yes, sir.

A. No, I do not think so.

Q. You wouldn't say that wasn't so?

Mr. Dexter: Well, your Honor—

Mr. Klein (interposing): I am asking to be sure whether the witness is sure.

A. I am not sure, but I doubt it.

Q. You are not sure. What is your present recollection of the (601) highest mortgage you made in 1952?

A. I wouldn't have any idea.

Q. What was the general average amount?

A. We followed a policy of ten thousand top for a long time. Now, whether we had gone beyond that in 1952 or not, I don't know. Only one loan of that size that I remember of, and that was a commercial loan that had been turned down by the local banks and refused, and we took it.

Q. You made a commercial loan?

A. Made one commercial loan, I remember of, that had been—we had sent them to the bank and they were turned down and so we made the loan.

Q. When was that, sir?

A. I don't remember when.

Q. Don't remember when. Do you have safe deposit boxes in your—

A. (Interposing): No.

Q. Do you sell or redeem U. S. Savings bonds?

A. Yes.

Q. Do you issue money orders and traveler's checks?

A. Yes.

Q. Do you have Christmas and vacation club savings plans?

A. We have a Christmas Club.

Mr. Dexter: This is in 1952?

(602) Mr. Klein: In 1952.

Q. What was your practice after you obtained a mortgage in 1952 about recording it?

A. We always recorded it immediately.

Q. Immediately. And, Mr. Dexter has been asking questions of whether or not you made construction loans?

A. Yes.

Q. To builders?

A. Some to builders, but mainly to ultimate home owners.

Q. Did you make any to finance companies?

A. No.

Q. And in connection with construction loans, did you pay out all the money at one time?

A. No; the money was released as the building progressed.

Q. And how long would it normally take before all of the mortgage money was paid out on the mortgage as the building progressed?

A. Generally three to six months.

Q. And I am not sure whether I covered this. Is this a fair statement, that shareholders, it was not necessary for them to become borrowers, and it wasn't necessary for borrowers to become shareholders?

A. That is right.

Q. That is correct. Now, in 1952 did your association pay any personal property tax?

A. Yes.

(603) Q. What was the tax, and what was the assessed value of the property?

A. It was the furniture and fixtures.

Q. Yes, sir.

A. Assessed at \$12,000.

Q. And your tax, that is an ad valorem property tax?

A. We paid three different ones, but one of them was for the year '51, which wasn't due until after the first of the year; do you want that in there?

Q. I want the 1952.

A. That was due in 1952.

Q. Yes.

A. That was \$339.54.

Q. Did you pay an ad valorem real estate property tax upon your real estate?

A. Yes.

Q. And that was based upon the assessed value, was it not?

A. That is right.

Q. And that was at the same rate as all other real estate in Battle Creek was subjected to the same tax, the same rate?

A. Yes.

Q. Did your association pay an annual privilege fee to the State of Michigan in 1952? I am talking about privilege fee as distinguished from intangibles tax?

(604) A. I do not think that went into effect until 1955.

Q. You didn't then pay it in 1952?

A. No.

Q. Did your association pay an intangibles tax on its shares, paid in amount of shares, plus reserves, for the year 1952?

A. Yes.

Q. Do you know the rate at which you paid?

A. 40 cents a thousand.

Q. Forty cents a thousand?

A. Yes.

Q. What was the general area in which your association conducted its business?

A. Our Federal charter allows us to go on a fifty mile radius. Our policy has varied from time to time; usually we have kept it within a five to ten mile radius.

(605) Q. Looking at your liability statement, did your association have any borrowings outstanding from the Federal Home Loan Bank as of December 31, 1952?

A. Yes; \$500,000.

Q. Was that the maximum borrowings you could make?

A. No.

Q. What were the maximum borrowings you could make as of that time?

A. Half of share capital, which was about five million.

Q. You could have borrowed \$5,000,000?

A. Yes.

(An advertisement was marked Exhibit 64 by the reporter.)

Q. (By Mr. Klein): I will show you Plaintiff's Exhibit 64 and ask you if this was an advertisement of the kind which was published in the Battle Creek newspapers in 1952 by your association?

A. That is evidently a photostat of one of our ads, yes.

Q. Which you published in '52?

A. I don't know when it was published.

Q. Was it published prior to '52?

A. I don't know that. It would have had to have been in '52 or prior, because we built a new building the next year.

Q. I am showing you a certificate on the back end of this exhibit as to where it appeared. Would this refresh your memory as (606) to when it appeared?

A. No, I wouldn't have any idea of the dates. It looks like one of our ads, but as to the date when we put it in, I—

Q. (Interposing): Is this a fair picture of the building which you occupied in 1952?

A. Yes.

Q. And I understand you now have a new and more impressive looking building?

Mr. Dexter: Your Honor, that isn't limited to time.

Q. (By Mr. Klein): When did you build—did you build a new building since then?

A. We built a new building, yes.

Q. When?

A. In '53.

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Q. (By Mr. Klein): Did you have counters inside of your offices like a bank?

A. Well, not just like a bank. I think ours are nicer, more (607) homey looking.

Mr. Klein: I should like to offer Plaintiff's Exhibit 64 in evidence for the purpose solely of showing the picture of the building, and we can delete the rest of it if you wish.

Mr. Dexter: Mr. Klein, would you just scissor this out, then?

Mr. Klein: Sure, you can scissor it out.

The Witness: One thing: You asked me our borrowing capacity in '52. I was giving you the maximum legal limit.

Mr. Klein: Yes.

-The Witness: But at that time the Home Loan Bank had put a limit on, and I don't know in '52 just what that limit was, but I think it was 10 per cent instead of the 50 per cent, the borrowing capacity.

Q. (By Mr. Klein): You don't know?

A. I don't know.

Q. In any event, you hadn't borrowed the full 10 per cent, either, had you?

A. Well, it was very close to the 10 per cent.

Q. Well, you had \$10,000,000 and you had borrowed 500,000?

A. Well, if it was 10 million, but you can borrow half of that, so 5 million was our limit, and if it was 10 per cent instead of 50 per cent, it would have been one-fifth of that, which would have been 1 million.

(608) Q. One million?

A. Yes.

Q. But you don't know whether that was it?

A. I'm not sure at that time. The Home Loan Bank rules change from time to time.

Mr. Klein: That's all, sir. Thank you.

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(609)

Cross Examination

By Mr. Dexter:

Q. As I understand it—I am going to try to go rather hurriedly here—that your shares may be assigned, but they can be (610) assigned only with the consent of the association; is that correct?

A. That's right.

Q. And that they are redeemed or repurchased at the option of the association?

A. Yes.

Q. And at the time they are redeemed or repurchased, it is at the face amount of the shares—that is, the dollar amount—plus the declared dividends that have not been paid?

A. That's right.

Q. And you have the power to refuse anyone to become a shareholder?

A. That's right.

Q. Now, generally, what is the nature of your assets and liabilities? You run down those quickly, if you will.

Let me ask you this: Are your assets and liabilities those that are disclosed on Plaintiff's Exhibit 62?

A. Yes, they were on December 31, 1952.

Q. And that is a general description of your assets and liabilities?

A. Yes.

Q. Do you know what cash reserves and deposits you are required to keep?

A. It may not be—

Q. (Interposing): My questions relate to the year 1952. You (611) understand that?

A. Yes. 6 per cent.

Q. What are your sources of capital and borrowed money?

A. The general public.

Q. But your shareholder accounts are your sources of capital?

A. That's right. Borrowed money, we can borrow from a commercial bank or from the Home Loan Bank.

Q. And did you do any borrowing from other than the Home Loan Bank for the year 1952?

A. I don't think we did in '52.

Q. But Exhibit 62 would indicate that if there was such an outstanding indebtedness?

A. That's right.

Q. Now, as I understand, the evidence of ownership that a shareholder has is indicated by Exhibit 63 in the passbook?

A. That's right.

Q. Is that the only evidence of any ownership of any type of share that you have outstanding?

A. We have a certificate form which says the same thing practically but—

Q. (Interposing): In different form?

A. Different form, but it is for the, as you call it, full-paid account or lump sum investment.

Q. Rather than the savings account?

A. Yes.

(612) Q. You don't maintain checking accounts for your customers?

A. No.

Q. And you don't guarantee interest to your shareholders, I understand?

A. No, or dividends.

Q. Nor dividends, neither. And your shareholders don't have the right to withdraw their deposits on demand; is that correct?

A. There are stipulations that we can take them. Our policy is to keep liquid enough so they always can.

Q. But they do not have that right?

A. That is right.

Q. And your shareholders are not creditors?

A. No.

Q. And where do you keep the cash you are required to have on hand for business needs?

A. We keep some in the Home Loan Bank, some in the Michigan National, and some in the Security National.

Q. And for the year 1952, can you indicate the amount of cash you had on hand in banks by reference to your balance sheet?

A. Let me ask you, would that be indicated in your balance sheet, the amount of cash you would have in the banks?

A. Yes.

Q. And that would be the Michigan National Bank?

A. And the Security National and the Home Loan Bank.

Q. And they would not be segregated on the balance sheet?

(613) A. No.

Q. Do you know approximately how that segregation was for the year '52?

A. No, but we have tried to carry around a hundred thousand in each of the commercial banks and the balance in the Home Loan Bank.

Q. Now, are the accounts kept in the commercial banks regular commercial accounts?

A. Yes.

Q. And are those accounts drawn on to pay the money to borrowers that come in and borrow?

A. To borrowers and to pay withdrawals on savings.

Q. In other words, you use a regular checking account service for those purposes?

A. Yes.

Q. And I suppose to pay your other expenses, and so forth, of the association?

A. Yes.

Q. I understand a very small percentage of persons who borrow from your association are members. Is that correct?

A. I don't know how big a percentage. We have made quite an effort to have every borrower have a savings account to accumulate for taxes and emergencies.

Q. In other words, you consider both aspects of your business—that is, getting shares and—

(614) Mr. Klein (interposing): I object to the form of the question. The witness didn't say that at all. I object to it.

Q. (By Mr. Dexter): Did you consider those two aspects of your business related—that is, your lending policies and your policy of getting shareholders?

A. Well, there is some relation there, yes.

(615) Q. What would be that relationship?

A. The relationship would be so we don't have such a collection problem after we pay taxes.

Q. Has it anything to do with the general purpose of your organization?

A. No.

Q. Do you know the general purpose of your organization?

A. Promote thrift and home ownership.

Q. And you would try to get share savings accounts to promote thrift; is that right?

A. That is right, whether they are borrowers or whether they aren't.

Q. But there is no direct relationship between the two so far as you are concerned?

A. No.

Q. I understand you require a financial statement from a borrower before loaning money to him?

A. Yes.

Q. He becomes a member of the association at the time the money is lent, simultaneously?

A. That is right.

Q. And membership is the same way in regard to shareholders, that is, they become a member at the time they become a shareholder?

A. That is right.

Q. You don't loan money to finance companies?

(616) A. No.

Q. And is all of your loan secured by mortgages on farm and residential property?

A. The bulk of it. Our federal charter allows us to loan up to 15% of our loans on other than strictly residences, which would include any commercial loans. Our policy has been to make practically none of those. We specialize in home loans.

Q. All your loans are secured by real estate, regardless of the purpose?

A. First mortgage loans on real estate.

Q. First mortgage loans on real estate. You are not permitted to borrow from the Federal Reserve System?

A. No.

Q. You are a member of the Federal Home Loan Bank of Indianapolis?

A. Yes.

Q. Are you insured by any agency of the government, that is, your shareholders?

A. Federal Savings and Loan Insurance Corporation.

Mr. Klein: Would you say to what amount?

Q. (By Mr. Dexter): To what amount are the shareholders insured?

A. Up to one thousand.

Q. Do you know the number of employees you have?

A. Twenty-six.

Q. What was the amount of real estate valuation of your property (617) taxes paid in the year 1952 on your real estate?

A. I don't have those figures with me. I have the personal property tax.

Q. You don't have the real estate figures?

A. No.

Q. Do you know what the average size of your mortgages were that you took in 1952?

A. The year of '52 our average mortgage was \$4,190.81.

Q. And as of December 31, 1952, what was the average of all your mortgages?

A. \$3,026.70.

Q. And for the share accounts opened in '52 what was the average balance?

A. \$745.50.

Mr. Klein: That is the account that is opened in '52?

A. The ones opened in '52, the average balance, \$547.35.

Q. (By Mr. Dexter): And the other figure you gave was the average of all your accounts?

A. All the accounts.

Q. As of December 31, 1952?

A. No, this year. \$745.50 is the average.

Q. You don't have it for '52?

Mr. Klein: It is right here in the report. 8,085 accounts had \$10,512,000, which is about \$1,200, or (618) little more than \$1,200 average.

Q. (By Mr. Dexter): The average is \$1,330. Let me ask you this: generally do you carry out the purposes set forth in the statutes under which you operate and your by-laws and the rules and regulations of the Federal Home Loan Board?

A. We do.

Q. The purposes of your association and what you actually do are in accordance with those purposes?

A. That is right.

Q. As expressed in the regulations and statutes and by-laws?

A. Yes, sir.

Mr. Dexter: Your Honor, that is all I have, subject to the right—

Mr. Klein: One question.

Re-direct Examination

By Mr. Klein:

Q. It has been asked of you whether your association had the power, the association had the power to redeem or purchase shares from shareholders at its option, and I think you testified the association did have that power?

A. That is right.

Q. Did it exercise that power in 1952?

A. I don't think we ever have required anybody to—well, we (619) have, but we didn't in 1952.

Q. And even in the past did you exercise that power very much?

A. Not very much.

Mr. Klein: That is all.

(623)

Lansing, Michigan,
Thursday, May 22, 1958,
9:00 o'clock A. M.

(The hearing of this cause was resumed pursuant to the adjournment.)

Mr. Klein: Ready, sir?

The Court: Yes, you may proceed.

Mr. Klein: If it please the Court, we have had marked and now offer into evidence Exhibits 65-A, 65-B, 65-C, 65-D, 65-E and 65-F.

(624) Exhibit 65-A is an abstract and summary of all real estate mortgages recorded at the office of the Register of Deeds in Calhoun County, Michigan, for the calendar year 1952, and shows the name or names of each mortgagor, of each mortgagee and the principal amount of each recorded mortgage.

The names and amounts are listed from page 3 through page 65 of Exhibit 65-A in the chronological order in which they were recorded in the Liber of Mortgages of the Register of Deeds' office of said county, and as is more particularly described in the notice of intention originally served by plaintiff in February, 1958, and again re-served upon counsel for defendant on April 23, 1958, pursuant to second notice of intention which was filed after the Supreme Court of Michigan approved the Court of Claims rules.

Similarly, Exhibit 65-B is a similar type of abstract and summary of all real estate mortgages recorded in Genesee County, Michigan, with the Register of Deeds there, in the Liber of Mortgages as described in the aforesaid notice of intent, and the summaries which we offer appear from pages 67 through pages 207 of Exhibit 65-B.

Similarly, Exhibit 65-C is an abstract and summary of all real estate mortgages recorded in Ingham County in the calendar year 1952 in the Liber of Mortgages at the (625) Register of Deeds' office for Ingham County, and the abstracts and summaries to which we refer in Exhibit 65-C commence at page 210 and continue through page 291.

Exhibit 65-D, similarly, is an abstract and summary of all real estate mortgages recorded in Kent County, Liber of Mortgages, at the office of the Register of Deeds of that county for the calendar year 1952, and the portion we are now offering commences from pages 293 and continues through page 424.

Exhibit 65-E is a similar summary and abstract of all real estate mortgages recorded in the Liber of Mortgages in St. Clair County, Michigan, in the calendar year 1952, and the abstracts and summaries we are

offering now appear at pages 503 through pages 553 of Exhibit 65-E.

Similarly, Exhibit 65-F is an abstract and summary of all real estate mortgages recorded in Saginaw County, as appears in the Liber of Mortgages, the Register of Deeds' office of Saginaw County, for the calendar year 1952, and the portion we now offer commences at page 426 and continues through 501.

Copies of these abstracts and summaries of the recorded mortgages in the aforesaid counties were delivered to counsel for defendants in early February, 1953, and are referred to in the aforesaid notices of intention to offer (626) as evidence under Rule 10 of the Rules of the Court of Claims.

Exhibits 65-A through 65-F are offered to show, one, the names of the mortgagors, the names of the mortgagees, and the principal amounts of all real estate mortgages recorded in each of the said six counties in the calendar year 1952; two, to prove as prima facie proof the existence of said mortgages, and that the principal amounts of said mortgages were paid by the mortgagees there named to the mortgagors, or committed to be paid by the mortgagees to said mortgagors.

A column appears in each of these exhibits describing whether or not the mortgages are on residential property, farms or businesses.

At this time, except for the proof already adduced from the savings and loan associations as to the character of the property covered by the mortgages, the description of the type of property in respect to the other mortgagees, as appears on the exhibit, should not be considered in the offer at this time. The plaintiff intends to furnish proof as to the character and type of property securing its mortgages—that is, the mortgages in which

it is the mortgagee, described in said exhibits, as we offer the rest of the proof.

The Court: That concludes the offer?

(627) Mr. Klein: That is the offer.

The Court: All right, Mr. Attorney General.

Mr. Dexter: Well, for the reasons I have already stated in response by matter of brief, and by this Court's opinion dated the 20th day of March, 1958, concerning the admissibility of such alleged or purported abstracts, defendants object to the admissibility of the same.

In the first place, we do not believe there has been any foundation laid this morning in regard to what these are, except Mr. Klein's statement that they are abstracts and summaries. There is nothing to authenticate them otherwise than the statement of counsel.

We simply assert they are not the best evidence of the thing they are trying to prove, . . .

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(651) The Court: . . . So the exhibits will be received, subject to this: After these rules were adopted the last time, or the only time they were ever adopted, I guess, I wrote a letter to you gentlemen and told you that it had been called to my attention that they had been adopted, that I was in the midst of a trial term and I didn't have time to dispose of this matter finally, and I suggested that the matter be held in abeyance and taken up at the time that the case came up into court, and that I would give them such additional time as might be necessary to meet my rule.

So that while I am ruling that I am going to accept these, I am still ruling that the Attorney General, because of the fact that previously I indicated that I might (652) not, probably would not, that the Attorney General still has the time to make such inspection as he

wishes, such check on the accuracy of these summaries as he wishes to do before we finally accept them in evidence. Ordinarily you try to do that before trial, but it was the action of the court that made it unwise, at least, for you to go ahead and do it, so we are going to have to adjourn this case, of course, until July or some other time to finish up the plaintiff's proofs, and that will give you some time to make any check that you want to, and I may assure you that you will have all the time that you need within reason to make any check that you want to on the accuracy of these things.

But subject to your rights in that respect, the abstracts, which are Exhibits 65-A, B, C, D, E, and F will be received under the provisions of Rule 10.

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(656) PHEIFFER, EUGENE, was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. By whom are you employed, Mr. Pheiffer?

A. Saginaw Savings and Loan Association.

Q. And that is located in Saginaw, Michigan?

A. Yes, sir.

Q. And what is your capacity with that Association?

A. Executive vice-president and secretary.

Q. How long have you held that position with the Association?

A. Since January 2, 1951.

Q. And what was your occupation prior to that?

A. I was a trade association executive for the United States Savings and Loan League in Chicago.

Q. So that you have been employed by the Association since 1951, is that correct?

(657) A. Yes, sir.

Q. Now, I will ask you where the Association is located.

A. 219 South Michigan Avenue, Saginaw.

Q. And how long has it been located there?

A. Since about August of 1952.

(A photograph was marked Plaintiff's Exhibit 66 by the reporter.)

Q. Mr. Pheiffer, I will show you what has been marked Plaintiff's Exhibit 66 and ask you if you can identify that?

A. Yes, that is our building.

Q. And is that the same building that you have been referring to that was built in August, 1952?

A. That was started in '51, completed in '52, so we will have no misunderstanding.

Mr. Van Zile: I will offer Plaintiff's Exhibit 66.

Mr. Dexter: No objection, except the continuing one, your Honor, as to materiality.

The Court: Received.

Q. (By Mr. Van Zile): In what area does your Association operate?

A. Saginaw County, with approximately ten loans outside of Saginaw County.

Q. I perhaps should have rephrased the question to be more exact. Where are your savings members located generally, Mr (658) Pheiffer?

A. Saginaw and the surrounding area.

Q. And where are your borrowing members located?

A. Saginaw County, with approximately ten loans outside the county.

Q. When was your Association founded?

A. January 26, 1888, I believe.

Q. So that your Association was one of the first Associations formed in the State of Michigan; is that correct?

A. I really don't know.

Q. Do you know when the savings and loan act—building and loan act was first enacted in the State of Michigan?

A. No, I don't.

Q. Do you have your charter with you?

A. Yes, I do.

(The charter was marked Plaintiff's Exhibit 67 by the reporter.)

Q. I will show you what has been marked Plaintiff's Exhibit 67 and ask you what that is?

A. That is our charter.

Q. Is that your original charter, Mr. Pheiffer, the charter as originally drawn of the Association? Will you look at the certificate.

A. No, it is not the original. It has been compared to the (659) original on file in the office, and it is a true and correct copy of the original filed with the Department of State, so I assume it is not the original. It is a true copy.

Q. I misspoke myself. Is it a true and correct copy of the original charter filed in 1888?

A. Yes.

Mr. Van Zile: I offer Exhibit 67.

Mr. Dexter: No objection except the continuing one, your Honor.

The Court: Received.

Q. (By Mr. Van Zile, continuing): Do you know the amount that was originally subscribed and paid in as capital?

A. No, I do not.

Q. Are you familiar with the manner in which this Association operated after it was first incorporated?

A. I really don't think I am.

Q. You have no knowledge of that?

A. Specifically, Saginaw Savings & Loan?

Q. Yes.

A. I would say "No."

Q. Is there anyone connected with the Association that has such knowledge now?

A. No, because it was formed seventy years ago and none of the original people founding it are now living.

(660) Q. So that you wouldn't know of your own knowledge whether this Association operates as it first did, is that correct, Mr. Pheiffer?

A. That is correct.

Q. Did you bring with you copies of your by-laws, Mr. Pheiffer?

A. I brought copies of the by-laws for 1957, 1952, and as they are current today.

Q. Pardon me. Did you want to say something?

A. No.

Q. Do you have, or does your Association have in its possession copies of earlier by-laws?

A. I had no reason to find out until late yesterday afternoon, your Honor, on a call, and the person in charge who really handles this had to go to the doctor, and I am sure we have them on file, and I am sure they are on file with the Secretary of State's office.

Q. You think they are on file?

A. It is my opinion they are.

Q. If it turns out they are not, and we ask you, would you supply us with copies of those earlier by-laws?

A. If we have them in our files.

Q. That is what I mean. Do you have a copy of the by-laws under which you operated in 1952?

A. (Producing document).

(A document, By-laws of Saginaw Savings & Loan (661) Association, 1952, was marked for identification by the reporter as Exhibit 68.)

Q. (By Mr. Van Zile, continuing): I will show you a document marked Exhibit 68 and ask you what this is?

A. By-laws of the Saginaw Savings & Loan Association in effect in 1952.

Mr. Van Zile: I will offer Exhibit 68.

Mr. Dexter: No objection, except the continuing one.

The Court: Received.

Q. (By Mr. Van Zile, continuing): I take it from your previous answers, Mr. Pheiffer, you are not familiar with the changes that have occurred, if any, in the by-laws over the course of years?

A. No, I am not; since 1888?

Q. Yes.

A. You are referring to?

Q. Yes.

A. No, I am not familiar with them.

Q. May we retain Exhibit 68 for our files?

A. Yes, sir.

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(663) Q. (By Mr. VanZile, continuing): How do you derive your capital, Mr. Pheiffer?

A. Through the investment by our shareholders.

Q. And they invest in shares in your association, is that correct?

A. Yes, sir.

Q. What class of shares?

A. We have optional and full paid.

Q. You have no advance payment shares?

A. No, sir.

Q. How long is it since you have had advance payment shares?

A. We haven't had advance payment shares during my period as manager since 1951.

Q. You have no reserve shares?

A. No.

Q. No installment shares?

A. No, sir.

(664) Q. And as the name indicates, I take it that these are shareholders, these investors; is that right?

A. Yes, sir.

Q. And their shares are shares of stock?

A. Yes, sir.

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(665) Q. (Interposing): Is the shareholder a creditor in your association—a creditor of your association?

A. They have equity in the association.

Q. Are they creditors of the association?

A. I don't see where someone who has—they have an equity in the association?

Q. Are you allowed to accept deposits?

A. No, sir.

Q. Are you allowed to pay interest?

A. No, sir.

Q. Do you guarantee the payment of your dividends?

A. No, sir.

Q. In fact, there is no guarantee whatsoever that there will be any dividends; isn't that right?

A. I don't think it is necessarily right, when you have reserves and some undivided profit.

Q. Do your shareholders share the risk of loss in the event that there is a loss encountered by your association?

Mr. Dexter: Your Honor, I think that is a hypothetical question.

A. Our accounts are insured by the Federal Savings & Loan Insurance Corporation, and those that would not be never would have the chance to share the loss.

(666) Q. (By Mr. Van Zile): How are your shares represented?

A. By full-paid certificates and by optional pass-books.

Q. Are those certificates different in any respect than those of other state associations?

A. I really don't know. I have never compared them all. They are approved by the Secretary of State and have been submitted to him for—

(667) Q. (By Mr. Van Zile): I will show you these exhibits and ask you what they are?

A. A full-paid certificate as used in 1952, and a savings passbook as used in 1952.

Q. So that 69-A is the fully-paid certificate, and 69-B is the optional savings passbook; is that correct?

A. Yes, sir.

Mr. Van Zile: I will offer these into evidence.

Mr. Dexter: As I understand, the offering of Exhibit 69-B is in reference to the certificate portion?

Mr. Van Zile: It is the whole exhibit.

The Witness: With that should be a savings signature card.

(A savings signature card was marked Exhibit 69-C by the reporter.)

Q. (By Mr. Van Zile): And Exhibit 69-C is the so-called signature card; is that right?

A. Yes, sir.

(668) Q. And does that accompany the optional savings passbook?

A. It can accompany the optional or the full-paid, as you can see.

Mr. Van Zile: All right.

I will offer Exhibit 69-C.

Mr. Dexter: No objection except the continuing one to 69-A, B and C.

The Court: Received. All three exhibits received.

Q. (By Mr. Van Zile): The fully-paid certificate requires an investment in multiples of \$100; is that correct?

A. Yes, sir.

Q. The optional savings account can be opened for any amount?

A. Yes, sir.

Q. One dollar and up?

A. Yes, sir.

Q. Is there any limit on the amount that you will accept for investment in your association?

A. If we were offered a rather large amount of money, we might well take it up with the Board of Directors whether we would be willing to accept it.

Q. Have you ever been offered too much money?

A. Yes, sir.

Q. When?

A. In 1951 we were offered a large amount of money by a gentleman. We only agreed to take part of it.

(669) Q. How much did he offer?

A. He offered us \$100,000, and we would only take fifty.

Q. How many votes does each share have in your association?

A. One vote.

Q. For how many shares?

A. What is that, now?

Q. For how many shares? One vote for each share, is that what you are saying, or what?

A. Yes, one vote for each share.

Q. So that whether you have \$50,000 or \$1, you still have the same vote?

A. Oh, no. There is one vote for each hundred dollars that you have in the association. If you have \$10,000, you have 100 votes.

Q. So that your 100,000 offer would have carried with it a thousand votes; is that correct?

A. Yes.

Q. Now, do you advertise for shareholders for investments in your association?

A. Yes, we do.

Q. And by what means?

A. The largest amount of our expenditures for any advertising is through the newspapers.

Q. I might add, Mr. Pheiffer, so that we will understand each other, unless I expressly direct otherwise, my questions are (670) directed to the year 1952.

A. All right.

Q. Now, do you seek savings from all classes in the community or from some particular class?

A. We seek from all classes.

Q. And you understand what I mean by "classes"?

A. I assume you are referring to income groups.

Q. That's right. Is it necessary for a borrower from your association to be an investor? Do you understand what I mean?

A. An investor on the savings side?

Q. Yes.

A. No.

Q. Is it necessary for a borrower to invest any money as a condition of securing a loan from your association?

A. Generally not.

Q. What do you mean by that?

A. Oh, there can be times that he might. If there is a savings account, we would come nearer to making him a loan.

Q. Well, you mean you would increase his net worth and his desirability as a borrower from the association?

A. Yes.

Q. But it is not a requirement of your association that he invest any money in your association, is it?

A. Not in the year 1952.

Q. Was it before 1952, to your knowledge?

(671) A. No. Since.

Q. What types of loans do you make, Mr. Pheiffer?

A. In 1952, 95 per cent or more of our loans were conventional loans, and I would think I would be safe in saying 98, but I am positive in 95.

The Court: I didn't catch the type.

A. Conventional loans, sir.

Q. (By Mr. Van Zile): And conventional loans on the security of what?

A. Residential real estate.

Q. Located in the greater Saginaw area; is that right?

A. Yes, sir.

Q. And what kinds of real estate? By "residential," what do you mean, what classes of homes?

A. Generally single family.

Q. And covering again all types, all classes of homes, so to speak?

A. Define the word "classes."

Q. Well, by that I mean did you loan on homes across the railroad tracks, or did you loan across the board in Saginaw?

A. In my opinion, our institution has the best record of loaning across the board to all classes of people.

Q. Now, you say you had no FHA or VA or other Government insured types of loans in 1952 to speak of. Is that what you said?

A. Just let me check my record. I realize I have a record.

(672) More specifically, at the end of 1952 we had \$5,200,000 worth of conventional loans, and until that time—I am off a little bit on my percentage—we had \$535,000 worth of G.I. loans at the end of 1952.

Q. And how many FHA's?

A. No FHA's. On FHA Title II, I assume you are referring to?

Q. Improvements.

A. FHA Title II, we had none.

Q. Did you have any FHA improvement loans?

A. None.

(An Annual Report was marked Exhibit 37-N-1 by the reporter.)

Q. (By Mr. Van Zile): I will show you first, Mr. Pheiffer, what has been marked Exhibits 37-N-1 and 37-N, both being Annual Reports of your association, and I will ask you whether those reports, as of the dates indicated in the reports, truly and correctly represented the financial condition of your association as at those dates?

A. Yes, sir. I assume the reports are the same as completely signed and filed at that time and there have been no changes.

Q. And they bear your signature?

A. Yes, sir.

Q. Under oath?

A. Yes, sir.

Q. And notarized?

(673) A. Yes, sir.

Q. Were these two reports prepared in the customary course of your business and as a regular course of business? By that, did you make one of these reports out each year?

A. Yes, sir.

Q. You were required to do so by law; is that right?

A. Yes.

Q. And they correctly and truly summarize the entries appearing on your books and records; is that correct?

A. Yes, sir.

Q. And I will show you Exhibit 36-J, which is the Monthly Report for the month of December, 1952, and ask you if that truly and correctly represented the financial condition of your association as at the date indicated in the report?

A. Yes, sir.

Q. And that is signed by you?

A. Yes, sir.

Q. And under oath; is that correct?

A. I guess that is under oath in my terms.

Q. And it was required by law to be filed with the Secretary of State?

A. Yes, sir.

(675) Mr. Van Zile: We will offer Exhibits 37-N and 37-N1- in evidence.

Mr. Dexter: I assume, your Honor, that these will be received subject to your prior ruling on the other documents?

The Court: Same ruling as on the other annual reports.

(676) The Court: Let's not take the time now; let's go ahead. At any rate, you are making the offer as far as this institution's reports are concerned?

Mr. Van Zile: Yes.

The Court: And they may be received subject to the objection of Mr. Dexter. I make the same ruling. It is understood he objects to each and every one of them on the (677) grounds previously stated.

Mr. Van Zile: They may be received subject to that objection?

The Court: Yes, sir.

Q. (By Mr. Van Zile, continuing): Mr. Pheiffer, could you tell me what you base your last statement on that so much of your loans during 1952 were VA and none were FHA?

A. On our monthly report.

Q. On your monthly report?

A. Which gives our statement of condition as of December 31, 1952.

Q. And does that show how many VA and FHA loans you had?

A. Yes, sir.

Q. And does the annual report show similar information?

A. I really don't know without examining the report.

Q. Would you examine those two reports and tell me if it does? (Handing documents to the witness.)

A. O. K. (Examining documents)—yes, sir.

Q. They both do?

A. This one does (indicating). (Examining document.) You are handing me the reserve section. What does this have to do with loans?

Q. Well, I am handing you the whole report; you can look through the whole report if you like?

A. You want to know for the year 1952?

A. Yes, sir.

(678) Mr. Dexter: I would suggest, your Honor, that these reports speak for themselves and we won't try to bring out any testimony—

A. (Interposing): Fiscal year ending June 30, 1952, we had no FHA Title 2 insured loans.

Q. (By Mr. Van Zile, continuing): How about the VA?

A. We had VA loans.

Q. Are those loans that were taken during 1952?

A. No, those had been accumulated.

Q. My question to you is, is there anything in these reports that tells us how many VA loans were taken in 1952?

A. To the best of my knowledge, there is no information here which shows which loans were taken in 1952.

Q. You say most of your loans were conventional, is that correct?

A. Yes, sir.

Q. And could you give us some idea of the average term of your conventional loans? By "term" I mean term of years.

A. Fifteen years.

Q. That is your average?

A. No, that is not our average. I assume our average was around fourteen and a half; most of our loans were made in 1952 on a fifteen-year term, occasionally a shorter term. I have never taken the time to figure out the average.

Q. Well, the answer is you don't know what your average is, is (679) that correct?

A. I am not quite that stupid; I know it is between fourteen and sixteen; I know the average loan isn't seven.

Q. What rates of interest were you charging in 1952?

A. The most frequent rate was five per cent.

Q. And your rate of interest varied then?

A. Yes, sir.

Q. Why?

A. Occasionally we had a loan at five and a half or six per cent.

Q. Now, did you save so-called open-end mortgages in 1952?

A. Yes, sir.

Q. You made no FHA loans, is that correct?

A. No, sir.

Q. Either improvement loans or Title 2?

A. We made no Title 2's, and during the year 1952 we made no Title 1—oh, pardon me, I will correct my statement. No, at the end of 1952 we had 39 FHA Title 1 loans, amounting to \$22,450.

Q. As a matter of fact, you were advertising for FHA loans in 1952, were you not?

A. Well, you can see the extent of our program during the year. I don't remember when we started it, but we had thirty-nine loans which averaged about five hundred dollars apiece.

Q. Did you advertise for loans, FHA loans, such as we have been (680) talking about, in 1952?

A. We never keep an advertising file, and I would have to go through the Saginaw News file and check every page to see what our advertising plan was during

that year. We do not clip our own ads, or have them clipped and sent to us.

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Q. (By Mr. Van Zile, continuing): I will show you what has been marked Exhibits 70-A and 70-B.

A. One is described as an open-end mortgage plan offered by the Association; and the other is describing the open-end mortgage as well as an FHA loan on the Title 1 loan program.

Q. Did advertising similar to that appear in Saginaw papers in 1952?

A. To a very limited extent.

Mr. Van Zile: I will offer Exhibits 70A and 70-B.

Mr. Dexter: I object, your Honor. There is nothing to indicate that these particular ads were in 1952.

Mr. Van Zile: The witness has vouched for them.

Mr. Dexter: No, he didn't say these were 1952 ads. I do not think he testified at all exactly as to these exhibits.

(681) Now, if you want to ask him, Mr. Van Zile—
The Court (interposing): He said "of that type," did he not; I understood him to.

Mr. Van Zile: My understanding is that these exhibits were similar to exhibits that appeared not too often in the Saginaw papers.

A. Do not put words in my mouth, please.

Q. (By Mr. Van Zile; continuing): All right, you tell us about it?

A. I know, because of our address at that time, your Honor, 409 Court Street, and this program was adopted some time since I arrived in Saginaw in 1951; we adopted this program and moved out in August, 1952; so over a period of time I think this ad appeared; I don't know the exact date it appeared, 1951 or 1952,

and we adopted the program, and other open-end mortgages were the main stress, and ran four or five ads during that time.

The Court: When did you move from 409 Court Street?

A. In August, 1952.

The Court: Proceed.

Q. (By Mr. Van Zile, continuing): Now, in Exhibit 70-A, you are advertising, are you not, for FHA improvement loans?

A. Yes; we have two lines in that ad.

Q. I realize that, but just answer the question; is that correct?

A. Yes, sir.

(682) Q. And 70-B describes the open-end type of mortgage which you were seeking?

A. Yes, sir.

Q. Now, for what purposes did you loan your money on security of these conventional mortgages?

A. Would you please restate your question.

Q. For what purposes did you loan money on the security of these real estate mortgages we are talking about?

A. For the purpose of construction of new homes and the purchase of existing homes was the bulk of our use.

Q. Did you propose to loan money for purposes other than home financing, now construction, improvement of homes, and the like?

A. Not to my knowledge. Did we have any program, or such?

Q. Does this refresh your memory, what appears on Exhibit 70-B: "What is more, you can use the open-end plan for any purpose, a new car, maybe a new automatic

washer or a television set. Why not get all the details about the association's open-end mortgage plan."

Does that refresh your memory?

A. Yes.

Q. So that you did in fact make loans on the security of real estate for purposes other than home financing, construction and improvement, did you not?

A. Yes, we made a few.

(683) Q. You did?

A. I assume we did.

Q. In any event, you advertised for them, did you not, sir?

A. If you will identify the date of the ad for me.

Q. You have identified the date of the ad.

A. All right.

Q. Who in the Saginaw market—by market I mean the area in which you do business—are also engaged in the loaning of money on the security of real estate mortgages on residential properties in 1952? You understand we are speaking of '52?

A. First Savings and Loan, Second National Bank, Michigan National, Saginaw Savings and Loan. At that time I am sure that George O. Feters Company was a mortgage company, Equitable Life Insurance Company, and by the credit reports, numerous private individuals.

Q. Were they loaning money on similar types of property?

A. On existing structures, as I say, to some extent.

Q. Your answer is they were?

A. No, it isn't.

Q. What is your answer?

A. Well, I will give you a long involved answer then.

Q. All right, go ahead.

A. Equitable Life Insurance Company, and I think the banks and some private individuals were taking what I call the prime loans. I think we were taking loans at times—being by (684) nature a little higher risk institution, we are allowed by law to loan 75% of appraisal, and consequently we could help the person more to acquire a home than some other lenders could. So I think we were taking at times loans which other lenders could not take.

Q. Why?

A. Because the law permits us to loan 75% at that time, and, if I recall correctly, the banks were only permitted to loan two-thirds of the appraised value, and at that time I believe they were limited to ten years, and I think we took some loans probably that no one else would take. There was a very limited desire for those loans.

Q. Why was it you would not take FHA mortgages in that period?

A. I became manager completely as a stranger in '51, and there was some discussion of policy no doubt back in the mid 40's by our then board of directors.

Q. Are you telling me your policy changed after '52?

Mr. Dexter: I object to the answer, your Honor, unless it is for a special record.

The Court: I think he may answer it because of the particular situation here on the general record.

A. Starting in 1957, maybe late '56, because of, frankly, a great desire for housing in the colored area, our first FHA loans were made to a builder who wanted to see what he could build (685) for colored people. No FHA's had been made on that side of town to my knowledge, and it was a low housing, and we wanted to go along to see if this purpose could be filled.

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Q. (By Mr. Van Zile): Does your association regard the FHA mortgage as more or less desirable than the conventional mortgage?

(686) A. In 1952 they regarded the conventional loan as more desirable.

Q. And why?

A. Because at that time mainly of the quick service that you could provide for your customers.

Q. Did it have anything to do with the rate of interest?

A. This is only an opinion, but I think at that time, if I remember what the FHA rate was—I don't remember the '52—the rate was four and a quarter, four and a half, and we were making a vast majority of our loans at five. We wanted to be of service, and we could offer quick service; at that time, as I recall, it was 30 to 40 days to get an FHA loan, and we were closing loans, if needed to be, people wanted to know what time to close, we were closing loans in three days.

Q. Did you not say that your institution accepted loans with greater risks?

A. We are talking about in the conventional market now.

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Q. Did the fact that the FHA mortgage term was 20 years have any bearing on your decision in '52 not to take FHA mortgages?

A. I don't recall it ever being discussed. We were making loans on a thirteen year basis at the time, giving good service, and (687) I think that is the basic reason.

Q. Did the fact that FHA mortgages were insured and conventional mortgages were not have anything to do with your decision to take conventional mortgages in 1952 rather than FHA mortgages?

A. We were taking guaranteed GI loans at that time, which had some government aspects to them, so I don't think our decision hinged upon the fact of taking or not taking an insured loan.

Q. It was just, as I understand you, a matter of paper work; is that right?

A. A matter of being of service to the members of our association.

Q. Are you of more or less service to your community if you give a FHA loan than if you give a conventional mortgage?

A. I can give you a ten minute answer on it.

Q. If you can shorten it down, I will appreciate it.

A. In my opinion we can have just as much service or more on a conventional loan. Through our construction loan program at that time we were financing loans then for private individuals on a lot of \$500; and in one case I remember the fellow only owned a lot, but we knew because of his reputation he had the ability to build a house, and consequently his equity as it built up became the additional security. We can never do that under FHA, where a fellow who is a mechanic in our factory can go out under FHA and build a house. When the building program was completed, he was better off than going out and (688) getting a FHA loan. And we have numerous fellows we financed who built a house, had their labor equity and retained the profit and next year built another one. We have seen fellows come out with nice homes, where if it wasn't for the Savings and Loan, they would never get into that. The FHA wouldn't touch them, as I say, with a ten foot pole.

That was what we were referring to as our personalized service, trying to do the same thing with a low

down payment in a sense as FHA was doing on their program.

Q. But you did earn five to six percent as against four and a quarter percent; is that right?

A. Yes, sir.

Q. But that had no bearing on your decision?

A. I would think it wouldn't when we were taking four percent GI's at the time. It is a question of service.

Q. But most of your loans were conventional, were they not?

A. Yes, sir. But if our board was so cold-blooded that they wanted to get the last penny of interest, they wouldn't have made any GI's at four percent interest.

Q. Was there an equal amount of paper work involved in the VA loans?

A. It wasn't our feeling along about that time because—I don't remember when it changed—but at one time the VA appraiser was a local man in town whom you picked up in your (689) car and took out and appraised that house and got an answer then. You didn't have to wait for a long report from Flint. When that policy changed—it is not that present time, your Honor.

Q. Now, when you loaned money on a security of real estate, what was your procedure?

A. We received the application, the appraisal committee made the appraisal, board of directors passed on the loan, abstract was brought in either up to date or we had it brought up to date by the abstract company. Our attorney checked the title, gave us his opinion, we called the people and closed the loan.

Q. So that you were concerned with the value of the property and the personal ability of the borrower to meet the payments involved in the mortgage; is that right?

A. Yes, sir.

Q. And you considered the credit situation of the borrower?

A. Yes, sir.

Q. And not just the security involved in the property; is that right?

A. Yes, sir.

Q. Now, when a borrower walked in your front door, did he have to be an investor in your institution?

A. No, sir.

Q. In order to get in?

(690) A. No, sir.

Q. Do you use an application form for borrowing?

A. Yes, sir.

Q. Before you produce it, would you tell me whether it differs substantially from application forms used by other savings and loan associations?

A. I never did write and ask others to send me their copies so that I could compare them.

(An application form was marked Plaintiff's Exhibit No. 71 by the reporter.)

Q. I show you Plaintiff's Exhibit 71 and ask you to identify it.

A. That is the loan application for the Saginaw Savings & Loan Association.

Mr. Van Zile: I will offer it.

Mr. Dexter: No objection, except a continuing one. We believe it is cumulative evidence.

The Court: Received.

Q. (By Mr. Van Zile): I take it that loans are no longer bid off by your association?

A. That is right.

Q. You understand what I mean?

A. Well, I hope we are on the same psychic wave length. You mean about the days of gathering the people together, offering them to the higher bidder? Is that what you mean?

(691) Q. That is what I mean.

A. Then my answer was right.

Q. What were your total assets in 1946?

A. I don't think I had instructions to bring the '46. I thought we started with 1947.

(692) Q. I will show you, then, Exhibit 25, which is a report for '47, and ask you to tell me what the total assets were in that year?

A. In 1947, June 30?

Q. Yes.

A. Excuse me. I thought you wanted '46.

On June 30, 1947, our assets were \$3,254,380.63.

Q. And by June 30 of '52, what were your assets?

A. Our assets on June 30, 1952 were \$6,504,798.65.

Q. And as a part of the special record, your Honor, if I may, will you tell us what your assets were as of June 30, 1957?

A. Our assets on June 30, 1957, were \$17,810,727.20.

Q. Are there any restrictions on the amount of money which you loan on the security of real estate?

A. If you are referring to the state law to appraisals, 75 per cent of appraisal.

Q. No. I am asking you what your practice was, Mr. Pheiffer?

The Court: You mean on any one loan?

A. You mean one loan, one individual loan?

Q. (By Mr. Van Zile): As a whole. I mean taking all loans into consideration for the year 1952, did you have a limitation on the amount, total amount of money, which you would loan on the security of real estate?

A. Why, certainly.

Q. What was that?

A. Well, that is a policy that the Board of Directors have to (693) discuss from time to time as to

the amount of cash on Government bonds we keep on hand, what percentage of our portfolio will we allow.

Q. I mean per mortgage. That is what I am talking about.

A. Per individual mortgage?

Q. Yes.

A. During 1952—there is an understanding between the Board of Directors and the people on the staff that we have never been interested in thirty or forty-thousand dollar mortgages on the real higher-priced home.

Q. What is the largest amount that you loaned in 1952, if you can recall?

A. The largest individual loan?

Q. Yes.

A. I can't recall the largest individual loan. I know our average loan was about \$6,000. I would come nearer being right on that, after the passing of five years, than I would be to fish out and try to tell you what is the highest individual loan we made.

Q. Did you ever turn down a loan because it involved too much?

A. Yes. I don't know if it is in '52, though, frankly, but I know since I have been in Saginaw there has been one or two cases. We are just not interested in a very large loan.

Q. One or two cases?

A. And the one or two specific cases help to determine policy. (694) Part of our policy I think is determined from time to time by the individual situations which come up, and after the policy is set, from then on the staff knows the loans in which we are interested.

Q. Do you loan on combined residential-business property?

A. At the present time, out of about 2,800 loans, we might have five or six that is classified in that.

Q. What was the situation in '52?

A. Well, I think we would even have less in '52.

Q. Do you know?

A. It wouldn't be right to say I knew. I don't know every loan by heart.

Q. I am just asking to the best of your recollection.

A. Well, to the best of my knowledge, I would feel I would be absolutely on the safe side in saying—let me stretch it— not more than ten loans. I am just trying to think of a doctor downstairs and an apartment upstairs. It would be in residential areas.

Q. Did you make loans on commercial property?

A. In the past seven years—

Mr. Dexter (interposing): Mr. Van Zile, I assume the question is related to 1952?

Mr. Van Zile: Well, I so prefaced my remarks, Mr. Dexter.

A. I don't recall '52. I know from the time I arrived until about (695) '53, we made two loans that have been in that class. I don't know if they fell in the year '52. One was two or three thousand dollars to a fellow, and another one was slightly larger; but out of some—what—during that period of time, from six to eight hundred loans, there was one or two or three in the period.

The Court: And what was this five or six or possibly ten that we had in the preceding questions?

Mr. Van Zile: That was a combination residence and business.

A. If you call a doctor a business, or if you call an attorney a business.

Q. (By Mr. Van Zile): I don't think any of us would call that.

A. I know about the other classifications, where we have a lot of applications, where there is a house and a grocery store, which we didn't take.

Ours would be more houses than professional men. That would be a better term.

The Court: The first question was a combination; the second question was purely commercial?

Mr. Van Zile: That is right.

The Court: Very well.

Q. (By Mr. Van Zile): Now, you have said that you were permitted to loan up to 75 per cent, I believe, of the appraised value of property. Is that right?

(696) A. Yes, sir.

Q. And what was your policy in 1952, if you had one?

A. Our general policy among the staff on new construction was 70 per cent. Now, if a special situation came along because of credit, job, we could go to 75, and did a few times.

Q. That is on new construction?

A. Yes, sir.

Q. Did you have a different policy on old, already established homes?

A. Not too much. Possibly on houses thirty or forty years old, then two-thirds in that case; but houses that have been built since 1920, two-thirds to 70 per cent, and occasionally a good job, good credit, 75 per cent in that case.

Q. Did you feel that you were following a conservative policy to protect your investors in doing this sort of thing? By, that, I mean appraising it at the amounts which you have so stated.

A. Yes, sir.

Q. You felt that was conservative?

A. And it has proved up to this time they were very good loans.

Q. Did you make construction loans to builders?

A. Individual builders.

Q. Well, what other kinds of builders are there?

A. There is in this area and in Detroit the builder where you make fifty loans on a blanket mortgage, isn't there?

Q. Well, I don't know. I am just trying to find out.
(697) The Court: I take it you don't make those; that is the important thing.

A. No, we don't make those. Each construction loan we make is an individual loan.

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Q. (By Mr. Van Zile): By individual builders, do you mean corporate builders or persons that build individually or—

A. (Interposing): Our building economy in our city is, to a large extent, the individual operator who employs two or three people to work with him and has a truck and is practically to the point of working out of his house, and he builds five to twelve houses a year, one at a time.

Q. That is the way the builders are in Saginaw, I take it?

A. In 1952, that was the general pattern of building.

Q. So that you didn't have this large type of builder whom you have been talking about in the Detroit area?

A. No.

Q. You recorded all of your mortgages?

A. I hope we did.

The Court: Well, Mr. Van Zile, while I ruled, I would appreciate having that question asked in all cases. I would rather assume that that would be the case, in making the ruling I did.

(698) Q. (By Mr. Van Zile): You made it a habit, Mr. Pheiffer, to record all of your mortgages?

A. Yes, sir.

Q. And promptly?

A. Yes, sir.

Q. What taxes did you pay to the State of Michigan or other political subdivisions of the state in 1952?

A. Well, let's make with the state reports that you have which I looked at, that you put in as an exhibit. I think that shows it. (Documents were handed to the witness.)

Now, is this in our fiscal year ending in 1952?

Q. No. This is the end of the year, and would you describe the character of the tax, too, as you go along?

If you would like, I can ask you various taxes and you can answer.

A. Well, the problem we are going to run into on this report dated '52—all right. Let's talk about the intangibles, and ask me on that.

Q. All right. What intangibles tax did you pay, if you recall, in 1952? What was the rate of the tax, do you remember that?

Mr. Dexter: Your Honor, I think that is a matter of law.

A. I think I know what it is, but it is only an assumption. I think it is—what is it—four mills, the same as it is today. I don't know, though.

(699) Q. (By Mr. Van Zile): Was it 40 cents per thousand on the paid-in value of your shares? Does that strike a note?

The Court: As for intangibles, can't we assume that these people paid the intangibles tax required by law?

A. We paid it. I know it was our policy.

Q. (By Mr. Van Zile): Did you pay a privilege fee to the State of Michigan to the Secretary of State?

A. Yes.

Q. And was that at a rate of a quarter of a mill on your capital and legal reserve?

A. I don't have any idea. We have a treasurer who has been there thirty years and does this automatically every year. He knows the law backwards and forwards, and fills out his report.

Q. Did you pay a real property tax on your land and building?

A. Yes, sir.

Q. And was that levied on your assessed valuation at the same rate as other real estate located in Saginaw County.

Mr. Dexter: Your Honor, I think that on those questions, that it can be presumed that it was. I don't think that any of these witnesses can testify as to what—

A. (Interposing): We paid real property, and I am not going to say—in Saginaw we have just been having the biggest rhubarb in our town that we have had in years, whether it is a fair rate.

Q. (By Mr. Van Zile): You paid a real estate tax; you don't (700) remember what it is?

A. Yes, sir.

Q. (By Mr. Van Zile): Did you pay a personal property tax, Mr. Pheiffer?

A. Yes, sir.

(701) Q. (By Mr. Van Zile, continuing): You have your personal property tax?

A. Yes, sir. (Producing two documents.)

Q. And would you decipher this for me; tell me how much the tax was, and what the rate was, if you can?

A. This is the December 1, 1952 county tax (indicating) on personal property, \$2,500, the rate was

\$15.01, the one per cent collection fee—excuse me, the rate isn't \$15.01. Total taxes \$15.16, that is the county.

Q. And what was the tax in December or July?

A. This is the July city personal property tax. We were assessed at .42500. The total tax was \$69.09.

Q. Those were the only personal property taxes you paid during 1952, is that correct?

A. That is right.

Q. And what was your dividend rate in 1952, if you recall it?

A. Two and one-half per cent.

Q. And, subject to this special record, what is your dividend rate now?

A. Three and one-half.

Q. And to recapitulate; my understanding is that you made conventional mortgages, the length of which were fourteen or fifteen years on an average; is that what you said?

A. We never settled the average question.

(702) Q. I see.

A. I never made a statement on the average. I said it was some place in the neighborhood of fourteen years, one year either way. It is absolutely not seven or eight. So, if there is any—

Q. (Interposing): It could be ten?

A. It is not ten, I am positive of that.

Q. I mean it could be ten on the other end of the line?

A. For the average?

Q. No, not for an average; we are talking about maximum and minimum now; is that correct, it could be ten?

A. It could be ten on the other end what?

Q. What is the minimum?

A. The minimum loan?

Q. The minimum term.

A. The minimum term.

Q. Yes.

A. We have had people come in and tell us they want to build a new house, and we might have a loan written for one year, but it is rare.

Q. So your loans would range from one year to fifteen, is that what you were saying?

A. Yes. I want the record to show the number of one-year loans is way less than one per cent of the total. I do not (703) want to leave any impression in the record that we are holding our loans to one year.

Q. And the term of the FHA loan was twenty years?

A. Of the FHA loan?

Q. Yes; was that a twenty-year loan, FHA? What was the term?

A. We didn't make FHA loans.

Q. I know; I am asking you.

A. I don't know.

Q. You don't know; you have never made an FHA?

A. Not in 1952.

Q. In any year?

A. The 1956, 1957 or 1958, I know the terms right now, and I know what we have made. Do you want that?

Q. But you don't know what the term of an FHA loan was in 1952?

A. You were telling me twenty years; I frankly do not remember it was that; maybe it was; I don't know.

Q. What, to the best of your recollection, was the term of an FHA loan in 1952?

A. I am under the assumption there were special sections some place back even as early at 1952 in FHA; you might have got a twenty-five year loan; I don't know.

Q. The average rate of interest you charged was five to six per cent on your conventional mortgages, is that right?

A. Yes, sir.

Q. And do you recall what the rate of interest was on the (704) mortgages?

A. The net to the lender, after taking off the FHA, was in the range of four and a quarter to four and a half.

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Q. (By Mr. Van Zile, continuing): Could you tell us what the rate of appraisal was on the FHA type loan in 1952, if you recall it?

A. No, sir.

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(705)

Cross Examination

By Mr. Dexter:

Q. May your shares be assigned?

A. Yes, sir.

Q. And can they be assigned without the consent of the Association?

A. I have never known it being done in practice; I honestly don't know what you will find. The rare times they are assigned, they seek our permission and want it, so we will be on notice.

Q. The shares may be redeemed or repurchased by the Association?

A. Yes, sir.

Q. And that is done at the face value, plus declared dividends?

A. Yes, sir.

Q. Do you reserve the power to refuse anyone to become a shareholder? If you do, would that be provided for in your by-laws?

A. In the by-laws.

Q. In carrying out your functions as an association, do you carry out the purposes expressed in your by-laws and in the statutes made and provided that create you?

A. Yes, sir.

(706) Q. What are your sources of capital, your shareholders' funds?

A. Our shareholders' funds, as a source of the word "capital," yes, sir.

Q. And do you have a source of borrowed money?

A. Yes, sir.

Q. Did you have any borrowed money in 1952?

A. Yes, sir.

Q. Where?

A. From the Federal Home Loan Bank of Indianapolis.

Q. You do not maintain checking accounts with your customers?

A. No, sir.

Q. Where do you keep the cash required for your business?

A. Our cash is kept in the commercial banks in Saginaw.

Q. Why don't you keep the cash in another savings and loan association?

A. That is not the purpose; we want it in the bank; we even have most of it in the bank within a block and a half of our office for quick availability and convenience.

Q. Because you are maintaining a commercial checking account there—

A. (Interposing): Yes, sir.

Q. And do you pay out all your money, including your borrowers' money by drawing on the commercial checking account?

A. Yes, sir.

Q. To pay the expenses of your business?

(707) A. Yes, sir.

Q. Do you have any idea what balances you maintained in the banks during the year 1952?

A. On December 31, 1952, we had \$458,000.

Q. In commercial banks?

A. In the commercial bank, yes sir.

Q. In the locality that you do business?

A. Yes, sir.

Q. And what banks would that include?

A. Second National Bank and Trust Company, at that time, for our main commercial account; a small account with Michigan National Bank, used for our dividend full-paid payments, for the payment of dividends on our full-paid shares.

Q. How are the loans that you make amortized?

A. Equal payments over a period of fifteen years, or less.

Q. Do you loan money secured by chattel mortgages on automobiles?

A. No, sir.

Q. Do you make unsecured loans on the strength of a borrower's financial statement?

A. Insured FHA Title 1 loans, which has never been more than \$60,000 since we have been in the program.

Q. But outside of that, all your loans are secured by real estate mortgages? Are all of your loans secured by real estate?

A. All mortgage loans are secured by real estate, yes, sir.

Q. What provision is made in your mortgages concerning (708) prepayment?

A. In 1952 you could pay all you wanted to on your mortgage without penalty.

Q. Do you sell or assign any of your mortgages?

A. No; we have never sold or assigned any of our mortgages.

Q. As I understand, once the mortgage and the mortgage note are signed, funds are made available to the borrower by drawing on a commercial account in a bank?

A. Yes, sir, but I just want to make one exception; if it was a construction loan we would later pay it out as it progressed; by the same type of check. We hold the funds—

Q. (Interposing): And at that time would you record a mortgage?

A. We record the mortgage the minute we close it.

Q. And there wouldn't be any money expended at that time?

A. Except just for closing expenses.

Q. Would there be occasions where the money would never be lent because of changing conditions since the time of closing and the actual lending of the money?

A. I never knew of a case. We close a loan and hold the money and never pay it out?

Q. I was thinking possibly you determined to make the loan, you closed it, it is a construction loan of some kind, then the person does not go through with it, for some reason, the construction does not progress, whether it is a builder or individual, and the money is just never lent?

(709) A. Only one situation like that in the history of the association I know of, where the people got into an argument and it eventually ended up under whatever the seven-year law is, going into the state where they couldn't agree who is going to get the money. That is the only case I heard of, and that was on the books when I came to Saginaw. All the other loans have been completed and the money paid out.

Q. There is no relationship in time when the mortgage is recorded and the money actually expended; that is, there may be a lapse of quite a period of time?

A. The longest I know of has been around thirteen months, fifteen months, where a fellow built his own house and just took his time in doing it.

Q. Stressing the fact that we are discussing the calendar year 1952, what was the situation of the mortgage money market in that year, in the Saginaw area?

A. There were a great many mortgages in 1952 available. If anything, the demand was greater than the supply of money.

In our own case, we used borrowed money in that period of time from the Federal Home Loan Bank.

Q. Did you borrow as much from the Federal Home Loan Bank as you believed was prudent in order to meet this mortgage money demand?

A. Yes, sir; if we didn't borrow—if we didn't borrow, we had borrowed just in the previous year, and kept on using (710) this, because of the availability of mortgages in the year 1952.

Q. As I understand it, the demand for mortgage money in Saginaw, for the kind of loans you make, that is, homes, exceeded that which could be supplied by your association and other mortgage lenders in the area that lent money on that type of security? In other

words, there was an excess of demand for mortgage money?

A. Yes, we had more loans available to us on our policy than we could actually handle, and had to borrow money.

Q. Was that true of people lending money in that area at that time?

Mr. Van Zile: If he knows.

Q. (By Mr. Dexter, continuing): On what kind of property?

A. (Interposing): The next witness, I don't know whether he had borrowed money at the time, I think he did, but, gee, I don't know; I am sure that was—I felt the market—that was the situation, that is the reason I came to Saginaw, frankly, because of the underdeveloped availability of home financing; that was the situation in the late forties and early fifties.

Q. And that was serving the purpose of your association to do that?

A. Yes, sir.

Q. Are you a member of the Home Loan Bank of Indianapolis?

(711) A. Yes, sir.

Q. You are insured by the Federal Savings and Loan Corporation, that is, your shareholders?

A. Yes, sir.

Q. Up to \$10,000. How many employees do you have?

A. In 1952?

Q. Yes; just generally.

A. It ranged from seven to nine.

Q. I presume you had just one location in Saginaw?

A. Yes, sir.

Q. Now, as I understand it, a borrower becomes a member when he borrows, right?

A. Yes, sir.

Q. And he is entitled to vote?

A. Yes, sir.

Q. An investor becomes a member when he invests money?

A. Yes, sir.

Q. Simultaneously. Why is it that a borrower becomes a voting member of your association, as well as an investor?

A. I see; that is sort of a middleman in the Board of Directors—we are making home ownership available to those people who want to acquire homes, and we are bringing together people who have money to invest, want to buy shares, and it is just as important that the borrower knows there is money in the community, that he is responsible to his neighbors for this (712) money, that he repays it, and that he is using it.

Q. In other words, isn't it a fact that the members are—or, your association is a mutual association, between people who are borrowing money for home mortgage purposes, and people who are investing money for that purpose?

Mr. Van Zile: I will object to that unless we have a definition of what Mr. Dexter means by the term "mutuality."

Q. (By Mr. Dexter, continuing): By that I mean that both people are members in an association, mutually each having a right to vote?

A. Yes sir.

(714) Q. In other words, let me ask you this.

A. Our point is a mutual institution, and the reason we are so successful today is because of borrowers and savers working together, and because during the depression a lot of people knew that the board of directors had made it possible for them to keep their homes, and we get a lot of business at this very hour because people remember the treatment.

Q: Let me ask you this. If you attempted to get the maximum interest possible would that be an endeavor that would be counter to your borrower members' interest?

A. We could charge—

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A. Yes, sir. If we are trying—if I follow the question right myself—if we are trying to hit the borrower for the highest possible interest we could get, then we are not serving our purpose in the Saginaw community.

Q. You wouldn't be serving your borrower members at all, would you?

A. Neither would we be serving the savers, because in the long run our own public relations, our reputation as a place where a little man can get a home is soon shot, and the word gets on the street.

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(715) Q. (By Mr. Dexter): Let me ask you this, then. Did you have a policy of helping the individuals acquire a home for his own occupancy during '52?

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A. Yes, we did. I think we did. For the number of loans we made, I feel we financed as high a percentage of our loans. If we made a hundred loans, and would it be fifteen or twenty or twelve, we had a higher percentage than anyone in the city on financing the owner built construction, and I still think that goes back to

one of the basic parts of our business, and it was our policy to do that, and it is today, and I know to the outsider and the person in Detroit, they look at us (716) like we are out of our mind, and yet we never had one loss or got into one mechanic's lien. We financed a fellow with a lot and his sweat equity, and those people today talk about boosters for our business and how it has helped build his house because we gave him an opportunity, where there is only one other place in town that they could get it.

Q. Just one more question, and I think we will be through here. Most of your loans would be around the period of 15 years; that is the bulk of your loans?

A. I go back to the same answer I gave some place. Thirteen to fifteen.

Q. You didn't make very many one year loans or short-term loans?

A. No, sir.

(717)

Re-direct Examination

By Mr. Van Zile:

Q. First of all, I would like to talk about construction loans. Is it not true that in the case of so-called construction loans that those loans were committed for at the time they were made whether the money was paid out or not?

A. Committed for what? Committed for us as borrowers?

Q. Yes.

A. Oh, yes, the record shows as soon as the loan was made we set aside and show each month how much we committed.

Q. It would appear on your balance sheet?

A. Yes.

Q. And it is set aside as a liability, so to speak, is it not?

A. Yes, sir.

Q. So that whether or not it was actually paid out immediately, it was committed for and carried as a liability; is that not right?

A. Yes, loans and profits.

Q. How long did it take to pay out those construction loans on the average from the time that they were committed for?

A. Oh, I would say the average, about four to four and a half months.

Q. What percentage of your loans were construction loans?

A. You would have to add it up here. The report shows. I didn't (718) know you were going to ask the question. We can add it up here.

Q. Can you give me a rough approximation?

Mr. Dexter: Would that show the total construction loans on a cumulative basis?

A. It shows each month we made a hundred some loans during 1952. There are around 112, 115 construction loans, and it may well be, if I recall correctly, the annual report might show it, but we would have to look at both of them. We don't know which six months in '52 and which in '53.

Q. Were these so-called construction loans made to builders?

A. Part of them. I described earlier how we financed the one man builder in our city. I should say the one crew is a better word.

Q. Can you tell from the annual reports of the Secretary of State, referring to the report of your association—it is Exhibit 29—how much you borrowed.

from the Federal Home Loan Bank Board as of that date?

A. On June 30, 1951, we had \$400,328.68.

Q. I show you Exhibit 30, which is the report for 1952, and ask if you could tell me how much you had borrowed from Federal Home Loan Bank Board at that time?

A. On June 30, 1952, we had \$200,205.50 borrowed.

Q. So it is down, is it not, from 1951?

A. Yes, sir.

(719) Q. I will show you Exhibit 31, which is the report for 1953, and ask you if you can tell from that report what the amount was you had borrowed.

A. June 30, 1953, we had no funds borrowed from the Federal Home Loan Bank.

Q. So that by 1953 it was a long way down. That includes part of '52, does it not?

A. Yes, sir.

Q. That is the fiscal year ending June 30, 1953, right?

A. Yes, sir.

Q. I will show you Exhibit 32, which is the report ending June 30, 1954, and ask you what that report shows as to the amount you had borrowed.

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(720) A. For June 30, 1954, we had no funds borrowed from the Federal Home Loan Bank.

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Q. (By Mr. Van Zile): And I will show you Exhibit 33, which is a report for 1955, and ask you if you can tell me how much you borrowed from the Federal Home Loan Bank at that time?
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(721) A. June 30, 1955, we had no borrowed money from the Federal Home Loan Bank.

Q. (By Mr. Van Zile): What was the state of the market for mortgages in terms of money available and mortgages needed?

A. I think that the answer is on the other side of the coin. Being I am out of town and the Board of Directors aren't hearing me, Pheiffer and his crew had a chance to go out, and the Saginaw Savings & Loan Association became better known, and our savings moved up in proportion to the need.

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(723) Q. Mr. Pheiffer, immediately before the recess we were talking about your borrowing from the Federal Home Loan Bank Board, as shown in the various building and loan reports, Exhibits 25 through 35, I believe.

Are those borrowings from the Federal Home Loan Bank an index of the tightness of money in the mortgage market? I mean the availability of mortgage money?

A. If there hadn't been a demand for the use of the money to make mortgages, we certainly wouldn't have borrowed it and paid the interest. We had an outlet for it.

Q. Am I correct then in saying when your reports show that you were borrowing money from the Home Loan Bank in (724) substantial quantities, it indicated that there was a shortness of money in your community for loaning on mortgages? Is that a correct conclusion?

A. No, not in my opinion, because that would mean then that we had no money problem in the Federal Home Loan; there would be no need for borrowing money, or any shortness. That is not the only indication. You cannot say flat that borrowings from the

Federal Home Loan Bank is an index of the demand for money in the community.

Q. Is it one?

A. It is one, yes, sir.

Q. Is it an important index?

A. Not necessarily.

Q. Is that one of your primary reasons for borrowing from the Home Loan Bank, so as to gain an added supply of money to loan on mortgages?

A. Yes, sir.

Q. Now, during these periods when the money was tight, so to speak, there wasn't as much available as in other periods for loaning on mortgages; was it your policy to be more selective in the mortgages that you made loans on, and the security?

A. We had certain funds available to be loaned.

Q. Yes, I realize that.

A. And we would take as many applications as we could which (725) qualified for mortgages with the Saginaw Savings & Loan.

Q. Well, did you up your qualifications for mortgages during those periods; did you try to make a safer loan, that is what I am saying?

A. I think all of our loans were safe; I mean that—

Q. (Interposing): Now, you testified, I believe, that you made some loans that the FHA wouldn't handle?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And was that because the prospective borrower was a poor credit risk?

A. No, sir.

Q. Well, what was the reason, if you can tell us?

A. Because of the procedure under FHA, only—an FHA loan to my knowledge couldn't be made to an individual to build his own house, do his own sub-contracting, and do all the work, or whatever percentage he wanted to do; the FHA wouldn't accept such applications, or neither would the VA by 1952.

Q. And how many of such loans did you make, have you any idea, in 1952?

A. Oh, I would say we loaned some place in the neighborhood of two hundred and fifty to four hundred thousand dollars during the year on this particular kind of application.

(726) Q. And I take it that your records would be available to show that sort of thing?

A. If we were still—our memory was such that we could go over each one of them and remember about the loan at the time. A loan to an individual to finance his own house looks just like the loan from the number and amount as any other.

Q. How do you know the loan was going to be of that sort?

A. When they come in to make the application for this loan?

Q. Would it show on the application?

A. On some of the applications it would. Others, at the time, brought in plans and specifications; and a break-down of the actual cost, cash outlay to build this house, how much it would cost under this procedure; and once the house is completed and meets our final inspection, then we give back the set of house plans and the specifications and the cash break-downs. So we might have in our files some, and some since 1952 we wouldn't.

(727) Q. Well, then, you haven't the records to show that, is that what you are saying, now? You haven't the records to show that now in your possession?

A. We have records—we have some of those records, and we have some due borrowers' accounts, no doubt, where it shows how the money was paid out, and if I inspected those, I would know from the way it was paid out whether it was some individual. If there is some 50 to 75 checks written for the material—we do not give the individual the cash; we pay the bills for him. While Joe Doakes, A-Number 1 contractor, we will make three payouts on the loan and give him the check.

Q. Now, your investors are interested in the rate of return that you pay on their shares, are they not?

A. Yes, sir, a certain section of them—a certain segment of them are.

Q. Will you please answer it yes or no?

A. I can't answer it yes or no.

Q. Then say you can't.

A. All right.

Q. And your dividend rate has been increasing, has it not?

A. Yes, sir.

Q. It has gone from something like 2 to 3 per cent, isn't that right, or is it 3½?

A. It has gone in my time from 2½ to 3½.

Q. And when the investor puts his money in a share account, (728) doesn't that interest rate which you are paying, isn't that the real reason why he invests in your funds?

A. No, sir. Surveys by J. Walter Thompson—

Q. (Interposing): No, no. I don't want—

Mr. Dexter (interposing): He asked a question, your Honor.

Q. (By Mr. Van Zile): Mr. Dexter can bring that out. If you can't answer the question, say so.

A. All right. I am not going to give you a flat 100 per cent yes answer.

Q. All right, then, don't.

A. O.K.

Q. I mean, that is all right.

Now, do you seek investments in your shares from corporations?

A. We have not circulated letters or made any special effort to send out mailings to corporations and trust funds or corporate funds or anything like that.

Q. Do you have corporate investors?

A. Oh, I'm sure we have. I can remember one.

Q. Do you have investments by trustees?

A. A few.

Q. Do you have—

A. (Interposing): Now, wait a minute. Let me back up.

In 1952, I think we had trustee funds at that time.

(729) Q. And do you have investments by pension funds?

A. Not to my knowledge.

Q. Or charitable organizations?

A. Define "charitable organization" for me, will you please?

Q. Churches, societies, and that sort of thing.

A. Service clubs?

Q. Yes, well, yes, that would be one.

A. Yes, we have a few accounts by charitable organizations.

Q. And it is your position, as I understand it, from your prior testimony, that those people are investing in your association as a community service, is that right?

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A. Define "community service." Define "community service" for me.

Q. (By Mr. Van Zile): Did you previously testify that they were investing as a community service in your association, or did I misunderstand you?

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(730) Q. (By Mr. Van Zile): Can you answer that question?

A. I don't think I used the term "community service." We are building in the community.

Q. Is your dividend rate dependent upon the amount of interest which you receive from your borrowers?

A: There certainly is a relationship.

Q. I mean the higher the interest rate that you charge your borrowers, the more dividends you could pay; isn't that so?

A. It is possible. It is up to the discretion of the Board of Directors.

(731) Q. And a five and a half or six per cent interest rate as against a four per cent interest rate will give you a greater return on your investment; isn't that so?

A. Yes, sir.

Q. And it will enable you to pay a higher interest rate; isn't that so?

A. Pay a higher interest rate?

Q. Dividend rate, I meant to say.

A. It would make it possible for us to do it, providing we maintain our liquidity position the same as in earlier years.

.

JEROME JAMES H. was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. What is your occupation, Mr. Jerome?

A. I am the executive vice president of First Savings and Loan (732) Association of Saginaw, Michigan.

Mr. Van Zile: For the record, your Honor, I would like to state that we have previously taken the deposition of Mr. Jerome pursuant to the terms of your discovery order previously entered, that in accordance with that discovery order we have the right to offer in lieu of his oral testimony the testimony which we took by deposition.

To expedite the proceedings, I would like to offer in its entirety the deposition of Mr. James H. Jerome, taken by the plaintiff at the offices of First Savings and Loan Association in Saginaw, Michigan, on Friday, December 13, 1957, together with the exhibits which were identified at that time, with the exception of one exhibit, which is the annual report of the Secretary of State for the fiscal year ended June 30, 1952; which was marked Exhibit 4 on the taking of that deposition, and which has already been introduced as an exhibit in these proceedings and received in evidence.

I don't know what your custom is, but I would like to mark his deposition as an exhibit, together with the exhibits, renumbering them.

The Court: Is there any objection, Mr. Dexter?

Mr. Dexter: No objection to this, except as to our objections stated in the deposition.

(733) The Court: To specific questions?

Mr. Dexter: No.

The Court: There may be some objection to specific questions already stated in the record, but as far as the deposition itself—

Mr. Dexter: No objection except our continuing objection as to materiality.

The Court: Very well, it may be marked for purposes of identification.

(The deposition of James H. Jerome was marked Plaintiff's Exhibit No. 72 by the reporter.)

Mr. Van Zile: The deposition itself is Plaintiff's Exhibit 72.

Exhibit 1 for identification on the taking of that deposition is the by-laws of the First Savings and Loan Association, which we will remark as Exhibit 72-A.

(The By-laws of First Savings and Loan Association was marked Plaintiff's Exhibit 72-A by the reporter.)

Mr. Van Zile: And Plaintiff's Exhibit 2 on the taking of that deposition will be remarked as Plaintiff's Exhibit 72-B. That is the passbook or savings account book of the association.

(The passbook was marked Plaintiff's Exhibit 72-B by the reporter.)

Mr. Van Zile: And the exhibit marked Plaintiff's (734) Exhibit 3 for identification in the taking of that deposition will be remarked as Plaintiff's Exhibit 72-C; and it is the statement of condition as of 12-31-52.

(The Statement of Condition as of 12-31-52 was marked Plaintiff's Exhibit 72-C by the reporter.)

Mr. Van Zile: And Plaintiff's Exhibit 5 for identification on the taking of that deposition will be remarked as 72-D, and that is the application for loan form of the association.

(The Application for Loan Form was marked Plaintiff's Exhibit No. 72-D by the reporter.)

Mr. Van Zile: I take it the reading of the deposition, Mr. Dexter, is waived at this time?

Mr. Dexter: Fine.

(An Annual Report for the year ending June 30, 1953, was marked Plaintiff's Exhibit 37-M-1 by the reporter.)

Q. (By Mr. Van Zile): Mr. Jerome, I will show you two exhibits which have been marked 37-M and 37-M-1, the annual reports of your association for the years ending June 30, 1952, and June 30, 1953, and ask you if they truly and correctly represent the financial condition of your association as of the dates noted in the reports?

A. To the best of my knowledge and belief, yes, sir.

Q. And I believe you signed both reports, did you not?

(735) A. Yes, sir.

Q. Under oath and notarized?

A. Yes, sir.

Q. Those reports were required to be filed with the Secretary of State as a matter of law?

A. Yes, sir.

Q. Were these reports made by your association in the regular course of business, Mr. Jerome?

A. May I have a little clarification?

Q. Do you make these reports every year?

A. Yes, sir.

Q. So that they were made in the course of your business, and did they correctly reflect book entries in your association?

A. Best of my knowledge.

Q. I will show you what has been marked Exhibit 36-I, which is the monthly report of your association to the building and loan division of the Secretary of State's Office for December 31, 1952, covering that month and ask you if that truly and correctly repre-

sented the condition of your association as at December 31, 1952?

A. Best of my knowledge, it does.

Q. And it is sworn to by an officer of your association?

A. He was secretary at that time.

The Court: Is that different from 72-C, Mr. Van Zile?

(736) Mr. Van Zile: Yes, 72-C, sir, was a published report that they distributed to the shareholders, and this contains a little more information than your published statement.

Q. (By Mr. Van Zile): Mr. Jerome, in 1952 did your association pay a personal property tax?

A. Yes, sir.

Q. Do you have the receipts for that tax with you?

A. Yes, sir.

Q. And these two receipts, Mr. Jerome, do they show that in December, 1952 you paid a county tax bill of \$60.65 on your personal property and on July 1, 1952, a further personal property tax to the city school district of \$276.35?

A. That is correct.

Q. Now, there is just one thing that I did not cover with you at the time that we were in Saginaw, Mr. Jerome. We discussed in general the purpose of your mortgage loans. Did you loan money on the security of real estate, residential property in Saginaw in 1952, for such purposes as the payment of taxes, refinancing mortgages, refinancing land contracts, buying automobiles, improving; medical bills, personal use, and so forth?

A. Yes, sir, we did.

.

(737) Q. First of all, it is true, as I understand it, that you did make mortgage loans for those purposes in 1952?

A. We made mortgage loans often where a man will come in and state his purpose is for personal use. We do not inquire as to what that use is. It may be to buy an automobile, or to pay a doctor bill, or such things.

Q. And that did happen in 1952?

A. Yes, sir.

Q. And did you, Mr. Jerome, advertise that you would make such loans?

A. Well, I searched our files for 1952, and prior years' advertising, but it had been destroyed. I could not answer.

Q. Well, I don't know whether this will refresh your memory or not. I am showing you that (handing document to the witness). Is that the sort of ads that appeared in 1952?

A. Well, it is our advertisement; whether it was 1952 or not, I couldn't tell you.

Q. I mean you don't remember whether such an ad did appear in 1952?

(738) A. No, I wouldn't be able to answer that positively one way or the other.

.

The Court: May I inquire whether the books of this corporation were marked or referred to at the time the deposition was taken?

Mr. Van Zile: No, they were not.

Mr. Dexter: No, they were not.

(739) GATES, WENDELL C., was thereupon produced as a witness on behalf of the Plaintiff, and, after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

Q. What is your position with the Peoples Savings & Loan Association of Battle Creek?

A. Executive vice-president.

Q. How long have you been executive vice-president of the Industrial Loan, Mr. Gates?

A. Since 1925.

The Court: Mr. Klein, I didn't get the full name of the corporation?

A. Peoples Savings & Loan of Battle Creek.

The Court: Peoples Savings & Loan Association?

A. That is right.

Q. (By Mr. Klein, continuing): Formerly your association was known as the Industrial Savings & Loan Association, was it not?

A. That is correct.

Q. And that was changed in what year to Peoples Savings & Loan Association?

A. 1955, I think; 1954 or 1955.

Q. And when was this association organized, Mr. Gates?

(740) A. January 12, 1925.

Q. And you were organized under the State Savings and Loan Association law?

A. That is correct.

Q. And your charter and by-laws are pretty much the same as most state savings and loan by-laws and charters? Do you know whether they are or not?

A. Well, I don't know about the others; it was more or less a standard.

Q. You think it was standard?

A. Yes.

Q. All right, sir. And, are you the chief executive officer, Mr. Gates?

A. I think so.

Q. And in that connection you have the chief executive responsibility of overseeing the negotiation of loans?

A. That I am sure of.

Q. And of attempting to get investment depositors—or, investment shares?

A. That is better, thank you.

Q. The answer is "Yes"?

A. That is correct.

Q. And do you have general supervision and control of the books and records of the Association?

A. Yes.

(741) Q. And you did have in 1952?

A. Yes.

Q. Mr. Gates, I will show you Exhibits which have been marked in this case—

(Annual Report year ended June 30, 1953, was marked for identification by the reporter as Exhibit 37-C-1.)

Q. (By Mr. Klein, continuing): —exhibits which have been marked 37-C and 37-C-1, and ask you if they are copies of the annual report of your association filed with the Secretary of State of Michigan under the name Industrial Savings & Loan Association, for the fiscal years ended June 30, 1952, and June 30, 1953, respectively?

A. I think that is correct.

Q. And I will show you an exhibit which has been marked Exhibit 36-A, and ask you if it is the monthly

report of your association filed with the Department of State of the State of Michigan for the month ended December 31, 1952?

A. To the best of my knowledge and belief, that is correct; that is our secretary who signed it.

Q. That is her signature?

A. Yes.

Q. And you know that signature?

A. Correct.

Q. And were those reports, Exhibits 37-C, 37-C-1, and 36-A, prepared in the regular course of business of your Association, (742) and pursuant to such regular course of business filed with the Secretary of State of Michigan?

A. They were.

Q. And do they truly and correctly reflect the entries which appear on the books and records of your corporation?

A. I believe they do.

Q. In fact, there is an oath on 37-C and 37-C-1 that they truly and correctly reflect—

A. (Interposing): That is correct.

Q. And did Mr. Walter North sign one as president, and I don't know who signed this other one, but whatever the signature is; is that (indicating) Mr. North's signature?

A. No, that was William Heffley; he was the preceding president.

Q. I see. And, in that connection, Mr. Gates, would your Association be willing to have Mr. Dexter, or someone from his office, inspect the books and records of your association to determine the correctness of these statements as filed with the Secretary of State?

A. Of course, that is a Board prerogative; if it is within legal bounds, it certainly would be all right.

Q. You know of no objection at the present time?

A. I know of none.

Q. Now, do you know what the capital of your Association was when it was organized, sir?

A. I will have to get my books.

(743) Q. Yes, sir.

A. (Producing documents.) On the original articles of association the authorized capital stock was \$2,000,000.

Q. What was paid in when you incorporated?

A. That I cannot tell you from this, but my recollection is that there was about fifty or sixty thousand dollars.

Q. And you started business on fifty or sixty thousand dollars, and according to your report, 36-A, on December 31, 1952, you had a total amount shown in investors' shares of over \$5,900,000, is that correct, sir?

A. That is what it says, yes.

Q. And you had total assets in excess of \$7,400,000?

A. Yes.

Q. That is on December 31, 1952.

Now, during the year 1952, and prior, did your organization endeavor to obtain as many shareholder investors as you could?

A. Well, we were advertising for thrift accounts, and were willing to take them.

Q. How often did you advertise, sir?

A. Well, that I cannot tell you now.

Q. Approximately?

A. Well, our normal contracts would run, with the press, that is, would run a couple insertions a month; sometimes oftener.

(744) Q. Were you on the radio?

A. Yes.

Q. How frequently, sir?

A. Well, we were on the radio daily for spots.

Q. Now, I am particularly talking about 1952.

A. I am not sure we were on that frequently in 1952.

Q. Yes. Did you use direct mail advertising?

A. With our statements only.

Q. And did you endeavor to obtain as many saving shareholder investment accounts as you could?

A. Yes; we had an opportunity to use the money, and we were inviting it.

Q. And did you agree with any shareholder to pay him any fixed amount of interest?

A. No, we didn't agree, any interest or any fixed amount either.

Q. In fact, you are prohibited by law from paying interest?

A. That is correct, yes.

Q. Did you pay dividends in 1952?

A. Yes, we did.

Q. And you paid dividends semi-annually, did you not?

A. Correct.

(745) Q. And dividends are dependent upon the earnings of your corporation, are they not?

A. That is correct.

Q. The more earnings you have in the operation of your business, the more dividends would be available to investors, wouldn't they?

A. Well, not necessarily. It could follow.

Q. You could only pay dividends if you were making earnings?

A. That's correct.

Q. And did your corporation hold back earnings besides the legal reserve?

A. Yes.

Q. To what degree?

A. Well, we held reserves, which is the prerogative of the Board, primarily to create proper reserves for doing business, considering the amount of business we are doing, new business and risk.

Q. But aside from that, your dividends would depend upon the earnings; you would keep building up reserves plus paying dividends?

A. But that factor is a very important one, the matter of creating reserves to cover new risks.

Q. Right. It was an added cushion for your shareholders, was it not?

A. It was a reserve to protect the new risks involved in business.

(746) Q. That if you lost on a mortgage, why, the impact of the loss wouldn't fall too hard upon the people who owned the corporation?

A. That's right.

Q. Now, did a person have to be a member before he became an investor with your corporation?

A. Yes.

Q. Or did he become a member at the same time as he became an investor?

A. He could do either.

Q. He was not required to be a member until he made the investment?

A. Yes. Not necessarily, but they were members before they invested.

Q. Yes. But you did appeal to the general public who were not members, did you not?

A. Yes, to be members.

Q. You asked them, you urged them to come in and make their savings account with your association?

A. That's correct.

Q. And when they made their deposits, they simultaneously became members, didn't they?

A. I said that didn't necessarily follow. Under the original Savings & Loan, they could become members and subscribe without having entered into the shares as members and pay the (747) installments in monthly to become members, which many of them did.

Q. Yes. But in 1952, you were trying to reach the general public, get as many people in as you could to put money in your association?

A. That's right.

Q. And no investor had to be a borrower, did he?

A. He didn't have to be a borrower, no.

Q. And no borrower had to be an investor in shares?

A. No. He had to be a member.

Q. And you took mortgages from people who were not members when they first applied, didn't you?

A. They might not have been members when they applied.

Q. That was not a requirement unless you loaned the money to them?

A. Not in 1952.

Q. In 1952 they did not have to be members until you actually loaned the money to them?

A. That's correct. Of course, they actually applied for membership with the application.

Q. But they didn't become members—

A. (Interposing): Qualify, that is correct.

Q. Now, what was your principal business in '52?

A. Well, that hadn't changed from the beginning. It was the encouragement of thrift—

(748) Q. (Interposing): No, I didn't ask that. What was your business transaction? What did you do with the capital when you got it from the investors? Did

you engage in the mortgage business, make mortgage loans?

A. Well, we encouraged home ownership any way we could.

Q. Well, you encouraged home ownership by loaning money to people?

A. Well, we did more than that.

Q. Well, did you loan money to people?

A. Yes, but we did more than that.

Q. I didn't ask you that. I asked you whether you loaned money to people secured by mortgages on their homes?

A. Well, that is only a part of it.

Q. And did you loan money to people on mortgages on their homes for other reasons than building or owning homes?

A. Yes.

Q. For what purposes, sir?

A. Anything to promote the home.

Q. I asked whether you loaned any money at any time to people for other than home ownership or promoting the home, such as to buy an automobile, to pay a doctor's bill?

A. Well, the answer is just the same. If we thought that promoted that home, we would make that loan.

Q. Well, did you make a loan secured by a mortgage on the home where a person was going to buy an automobile with the money he borrowed?

(749) A. If —

Q. (Interposing): Yes or no.

A. Well, I might not know, you know. There are a lot of times we consider it our borrower's business when he borrowed money what he was going to do with it. Our prime concern was that if we thought it might

be disastrous to his home or the operation of his home, we would refuse it.

Q. Well, now, Mr. Gates, this isn't a complicated question. In 1952 did you have any borrowers who came in to you, borrowed money from your association, placed a mortgage on their homes, where you knew that the money they borrowed was to buy an automobile?

A. The answer, I think, is yes.

Q. All right. And did you make similar types of loans for other personal uses?

A. We might have.

Q. Buying appliances?

A. Not very much of that.

Q. Medical bills?

A. Yes, I think so.

Q. Other personal purposes—

A. (Interposing): To promote a home, yes.

Q. I didn't ask that, sir.

A. Well, but that is the way they were really definitely decided on by the Board—whether we were doing that home, doing them—

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(750) Q. (By Mr. Klein): Did you make loans where the funds were to be used by the borrowers for other purposes than building a home, constructing a home, or maintaining the home itself?

A. I think so.

Q. You did. And what rate of interest did you charge borrowers in 1952?

A. Oh, I don't know. We had a variable interest rate.

Q. What was that, sir?

A. Which was applied on the basis of the way to try to measure the risk. In other words, the higher the

percentage went—my recollection then was that is was around $5\frac{1}{2}$ per cent, the bulk of them.

Q. The bulk?

A. Possibly to six, maybe some a little less.

The bulk of them were about $5\frac{1}{2}$, and some were six?

A. That is my current recollection.

Q. And in 1952, I suppose you were following a pretty conservative (751) policy to safeguard the interests of your investors, were you not?

A. Well, we try to do that right along.

Q. And in loaning money on mortgages in 1952, what ratio of loan would you make on the appraised value of the home?

A. Two-thirds— $66\frac{2}{3}$ maximum.

Q. What was the policy that you followed?

A. That.

Q. You said maximum, but if it is maximum, you may have had a minimum and an in between place. What was the average?

A. We don't have a minimum. The better the security, the better we like it; but the maximum was two-thirds. The statute, I think, was 75 per cent, and our own Board had set a maximum of $66\frac{2}{3}$.

Q. But did you, in fact, always loan up to $66\frac{2}{3}$?

A. No, of course not.

Q. And in many instances you loaned less than $66\frac{2}{3}$ of the appraised value?

A. They applied for less. They wanted less.

Q. And what was your average loan in respect to your appraisal in '52, if you know, and if you don't know, just say you don't know, sir. That is very simple.

A. I don't know, sir.

Q. All right. That's fine. We will get along splendidly that way.

Now, what type of mortgages did you make in 1952, (752) Mr. Gates?

A. All mortgages.

Q. All mortgages?

A. There were very few combinations and a very few commercial, of course. We stayed 2 to 3 per cent at the most, other than four-family homes.

Q. And you said you made some commercial loans?

A. And combinations. I'm not sure we made any commercial loan in 1952, but we have done it.

Q. And what size commercial loans did you make?

A. By and large, small. I mean by that, limited to ten, fifteen thousand dollars.

Q. And what was the maximum loan on homes made in 1952, sir?

A. Well, that would be kind of hard to show now. I wish I would have known you wanted it. I could have had it for you. My guess is that in '52 we didn't exceed \$20,000 in any case.

Q. If I suggested \$22,500, would that refresh your memory?

A. Well, we might have, but it would be in that range—I mean that type of loan.

Q. And your average mortgage loan in 1952, would you know what it was?

A. I really don't.

Q. If I were to suggest around \$5,600, would you say that is approximately correct?

A. I think it could be, because we made a lot of VA mortgages, (753) which were high percentage mortgages.

Q. Mr. Gates, I am going to ask you now what type of mortgages you made? Like conventional mortgages. Did you make conventional mortgages in '52?

A. Oh, yes. That is our main—

Q. (Interposing): And did you make FHA mortgages in '52?

A. I don't think we did in '52. We have made some since.

Q. Did you make VA mortgages in '52?

A. Yes.

Q. And VA mortgages are for 20 or 25 years, are they not?

A. Yes.

Q. And what was the duration, the average duration, of your conventional mortgage?

A. Well, our conventional mortgages were approximately 12-year mortgages—12 years and 7 months.

Q. And they were amortized on a monthly basis?

A. Correct.

Q. We are talking about '52, now.

A. One per cent of the amount.

Q. And did you look into FHA mortgaging in 1952?

A. I think so.

Q. And did you know that the rate of interest on an FHA mortgage was around $4\frac{1}{4}$ per cent in 1952?

A. Yes.

Q. And did you know that the general term of the FHA mortgage (754) in 1952 was from between 20 and 25 years?

A. Yes.

Q. But your association took mostly conventional mortgages?

A. Correct.

Q. And charged an average rate of interest of around $5\frac{1}{2}$ to 6 per cent?

A. I think so.

VOLUME II
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 155

**MICHIGAN NATIONAL BANK, ET AL.,
APPELLANTS,**

vs.

MICHIGAN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

**FILED JUNE 17, 1960
PROBABLE JURISDICTION NOTED OCTOBER 10, 1960**

Q. Now, do you have a record of the number of new mortgages in total in number of mortgages and in dollar amounts that you took in the year 1952?

A. Well, I haven't that with me. I could have had it with me.

Q. Well, in any event, the Exhibits 36-C and 36-C-1 show the number of mortgages made during each of those fiscal years—that is, ending in '52 and ending in '53, does it not?

A. I haven't seen it, but I am certain that would be correct.

Q. Right here? (Indicating)

A. Yes. Yes, that's correct.

Q. And I see for the fiscal year ended June 30, 1953, you had a total of 396 mortgages, new mortgages, during that year for an amount in excess of \$2,044,000?

A. Yes.

Q. And of the 396 mortgages, 120 were mortgages for purposes other than construction, purchase of home, or refinancing loans, or alterations?

A. Yes.

(754½) Q. And the total amount of such 120 mortgages exceeded \$390,000; is that correct?

A. If it says so, that is, yes.

(755) Q. And these other purposes were such purposes as loans for personal use, buying automobiles or such other purpose as the borrower might have had occasion to use the money for; isn't that correct?

A. Yes, I think so.

Q. Now, do you recall how many investors you had in 1952? I will show you Exhibit 37-C—this is as of June 30, 1952—which shows a total number of investors of 5,872, for an investment of \$5,602,457.

A. That would be correct.

Q. And you try to get as many new investors as you can, do you?

A. Yes.

Q. And the more investors you get capital from, the more money you have available for your mortgage end of your business; isn't that correct?

A. And liquidity.

Q. And liquidity, yes. And did you seek out investors of all economic and income class levels, sir?

A. Well, general advertising to whatever class that is.

Q. You appealed to all classes?

A. Whatever newspaper and our direct mail to our own members.

Q. You know a lot of your investors, don't you?

A. Yes.

Q. A lot of them professional men?

A. Some of them.

Q. A lot of them business men?

A. Yes.

(756) Q. Corporations?

A. No.

Q. Trustees of various funds?

A. Some, but few.

Q. Do you have any trustees of pension funds?

A. Not to my knowledge. We might have one now, but not in '52.

Q. And do you have any charitable organizations or societies that invested funds?

A. Yes, I think maybe about one.

Q. Any state or municipal agencies of any kind?

A. They don't do that much any more.

Q. Did they in '52?

A. I can't tell you for sure. We have had occasionally, but very small amount.

Q. In fact, you sought investors. Anyone who read your ad in the paper would be an investor, the more the better?

A. Well, we like some assurance it is going to be steady money. We didn't want fly-by-nights.

Q. Did you ever reject an applicant who made an investment?

A. Yes.

Q. How many?

A. That I don't know.

Q. Not very many?

A. When it was definitely short-term money, we don't want it.

(757) Q. When it was short-term money, you don't want it?

A. That is correct.

Q. But other than that, anyone who came along with his money you were willing to make him an investor, permit him to be an investor?

A. I think so.

Q. And then you permitted him to become a member at the same time?

A. Yes.

Q. And as far as types of mortgages you made, did you make mortgages on homes of people of all economic and income class levels?

A. We don't get much into really big ones, you know.

Q. You did loan up to \$22,500.

A. Yes, but that was one out of I don't know how many loans we made. Strictly speaking, our loan range is well under twenty thousand.

Q. In fact, I think we have established in '52 it was a little less than \$6,000 average.

A. I mean our top loan range is under twenty thousand.

Q. But you appeal to all people except big mortgage people, big home owners, you appeal to all class levels?

A. Well, we don't appeal to commercial, industrial.

Q. I mean on homes.

(758) A. On homes, yes.

Q. You had lawyers who were—

A. (Interposing): Some good ones.

Q. Some that had some money; that is unusual, sir. And doctors?

A. Right.

Q. School teachers? White collar workers?

A. Yes.

Q. Business executives?

A. Yes.

Q. Upon what did you loan your money? What was the basis in determining what you were going to do when you loaned money?

A. I don't quite get it.

Q. When an applicant came to you for a loan, did you require him to file a financial statement?

A. Definitely.

Q. And an income statement?

A. Credit rating, seniority, in some cases—I don't want to teach these other fellows the loan business now. Confirmation of sale and that type of thing.

Q. And you also had an appraisal on the property to be mortgaged?

A. Yes.

Q. And was the loan predicated solely on the appraised value of the property?

A. The limit was.

Q. But was the passing on the loan predicated solely upon that?

(759) A. No, on his credit rating, his seniority.

Q. Ability to pay?

A. Ability to pay, evidences of thrift.

Q. Character?

A. Pride in home ownership.

Q. You wanted^d to be sure you were going to get your money paid back, weren't you?

A. Definitely.

Q. Because if you didn't, why, you wouldn't have the earnings to pay to the people who invested in your shares?

A. There is a better reason than that. I think that we are in a fiduciary capacity where we owe this protection to the people. We handle their money for them, and that is our first responsibility.

Q. People who invest in shares, that is?

A. Well, that we feel deeply.

Q. People that invest in your shares?

A. Safety to them.

Q. You want to get as much return for them consistent with sound business and safety; don't you?

A. Correct.

Q. But in 1952 you felt that getting five and a half per cent interest and six per cent interest was following a safe policy along those lines, did you not?

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(760) A. Whatever the current rate was.

Q. Whatever the rate was, all right. When you made a loan, was it your policy to record the mortgage?

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Q. (By Mr. Klein): What was your policy about recording mortgages when you received them? Promptly or slowly?

A. Get them off just as fast as possible.

Q. Did you in 1952 pay a personal property tax, your association?

A. Yes.

Q. And how much was that personal property tax?

A. One hundred per cent of the assessed valuation, which is too much.

Q. And how much was the amount of the tax, and what was the assessed valuation, sir?

A. The amount of the tax for the city, that is just the city itself, the book value, that was \$10,071.20. The assessed value was ten thousand. The tax was \$90. The same book value, the December tax was on ten thousand, and the tax was \$191.80.

Q. Did your association pay an annual privilege fee in 1952 to the (761) Secretary of State?

A. Yes.

Q. Do you know at what rate that was paid?

A. It is on there. I don't recall that rate.

Q. If I suggested one quarter of a mill, would that refresh your memory?

A. It would be one quarter of a mill on what?

Q. Of your paid up capital and legal reserve.

A. Well, if it is understood it is on the entire paid in capital, I would agree.

Q. Did your association in 1952 also pay an intangibles tax to the State of Michigan for the year '52?

A. Yes.

Q. And if I were to suggest that is forty cents a thousand, that would be correct, sir?

A. Yes.

Q. In what area did the association do business in 1952, sir?

A. Well, legally within 50 miles in the county, but strictly speaking, not more than fourteen or fifteen miles.

Q. What was the population within the area in which you did business, roughly, in 1952?

A. Seventy, eighty thousand.

Q. In 1952 what other institutions were loaning money to people in the Battle Creek area you described secured by home mortgages?

(762) A. Of course, the largest lender was the Michigan National Bank.

Q. And what other?

A. And the next one was the Calhoun Federal and then the Industrial came third and the Security, and the other commercial bank came fourth.

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Cross Examination

By Mr. Dexter:

Q. May your share accounts be assigned?

A. Yes.

Q. And does it require the consent of the association to assign them?

A. Yes.

Q. May they be redeemed or repurchased at the option of the association?

A. Yes.

Q. Do your by-laws provide the method of redemption?

A. Yes.

Q. And a shareholder then is paid the face amount of the investment plus declared dividends; is that right?

A. Correct.

(763) Q. And that is the only thing the shareholder is entitled to, except in the case of complete liquidation, is that right?

A. Correct.

Q. And you have a constant turn-over in your shareholders, new ones come in and old ones going away?

A. Too many.

Q. You reserve the power to refuse anyone who wishes to become a shareholder or member?

A. We never have, but we could.

Q. Do you have that power reserved in your by-laws?

A. We do.

Q. So you do have the power?

A. Never used it.

Q. All right. Where do you keep the cash you are required to have on hand for business needs?

A. We keep for the current cash, that is, ten or twenty thousand dollars, in the respective offices—we have two branches, and—

Q. (Interposing): Do you keep any money in banks?

A. Yes.

Q. And are those in commercial accounts?

A. Yes.

Q. And do you draw on those accounts to lend money to your borrowers?

A. Yes.

(764) Q. And to draw on it for other expenses of the Association?

A. Correct.

Q. As I understand it, your sources of capital are your shares?

A. Correct.

Q. Do you borrow any money?

A. Occasionally.

Q. What is the source of your borrowed capital, borrowed money?

A. Well, we have used commercial banks some, and Federal Home Loan Bank.

Q. What percentage of your loans are made to individuals?

A. Well, there is very seldom an exception.

Q. I see. Do you loan money to finance companies?

A. No.

Q. Are all of your loans secured by mortgages on farm and residential property?

A. No; we have FHA Title 1, but not in 1952.

Q. In 1952 were all of your loans secured that way?

A. Yes, except on stock; our folks can borrow against their shares.

Q. Except where their shares are used as collateral?

A. Correct.

(765) Q. Do you make any unsecured loans on the strength of a borrower's financial statement?

A. In 1952, no; now, of course, FHA.

Q. My question relates solely to the year 1952?

A. O.K.

Q. What is the average duration of the loans which you make?

A. They are—the conventional are written for twelve years and seven months, and that has been extended a little to thirteen and fourteen, but seven and one-half to eight.

Q. 1952?

A. Yes, seven and one-half to eight years is the turnover, roughly.

Q. What is the average that the loan is made for, in 1952?

A. Twelve years and seven months was our standard conventional mortgage.

Q. Twelve years and seven months. You mean by average duration, that they were paid, some of them were paid up ahead of time?

(766) A. The average turn-over, about seven and one-half years.

Q. I see. That is by exercising the prepayment option?

A. Correct.

Q. Is there any penalty for prepayment?

A. None, except I should say on a construction loan for three years, after—in other words, we do not want to do the construction work and have it refinanced, so there is a penalty of one per cent until that three years is up, and on some of them there is that penalty.

Q. Is that a substantial part of your business, construction loans?

A. I would say thirty per cent of our mortgage loan business.

Q. This is the year 1952, you understand?

A. I think—well, 1952, I do not think it would have been that; maybe twenty-five per cent.

Q. You realize that all my questions relate to the year 1952, don't you?

A. Yes.

Q. In other words, a substantial part of your business is construction loans?

A. Yes.

Q. And do you loan to individuals for construction purposes as well as contractors?

A. Oh, yes.

Q. And at the time there is a commitment made, do you record the (767) mortgage?

A. Definitely.

Q. And it may be a period of time before the money is actually lent to the borrower?

A. That is correct; that is, for all of it.

Q. Do you sell or assign any of your mortgages?

A. No.

Q. Stressing the fact we are discussing the calendar year 1952, what was the situation of the mortgage money market in that year, in your area?

A. We had in good volume, as shown by two million, as for us.

Q. Was there an excess of demand for the mortgage money over the money available in the area?

A. I think so; I think that shows we had around—well, we had some Federal Home Loan money, which indicated there was a strong demand; that is, in part it would indicate that.

Q. That was one of your indices? In other words, you borrowed from them in order that you might meet some of this additional demand?

A. We borrowed from them also for liquidity.

Q. To use your reserve borrowing power you have from them, from time to time in consideration of your liquid position?

A. Correct.

Q. In other words, when you have a potential of borrowing from (768) them, you can become actually less liquid on your own statement, as long as you have that power?

A. Correct.

Q. And, as I understand it, the Board changes their practice in terms of your borrowing from time to time?

A. Oh, yes.

Q. I assume you are a member of the Federal Home Loan Bank of Indianapolis?

A. Yes, we are.

Q. And what agency of the Government, if any, insures your shareholders?

A. Federal Savings & Loan Insurance Corporation.

Q. Generally, you operate within the purview of the law, the statutes and the by-laws applicable?

A. Yes.

Q. In other words, you carry forth purposes, and so forth, as expressed in those statutes and in the by-laws?

A. Yes.

Q. And by the regulations of the Federal Home Loan Board?

A. Correct.

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(769)

Re-direct Examination

By Mr. Klein:

Q. How many offices did you have in Battle Creek, did you operate in 1952?

A. Two.

Q. You had two. And, did you ever have—

A. (Interposing): One is really not in the city; it is in Lakewood, a suburb.

Q. It is within the general area in which you do business?

A. Yes.

Q. In 1952 did your association have occasion to re-finance mortgages on any loans then held by the Michigan National Bank?

A. I couldn't answer that; I wouldn't know.

Q. Did the Michigan National Bank have occasion to re-finance any mortgage loans held by you during that period?

A. Those that I heard about, they did.

Q. Those hurt a little more. You don't remember of the joy you would have when you took away from them.

A. In one case they just asked me for signatures; it was automatic.

Q. Now, on construction loans, in 1952, what was the normal period of time that elapsed between your granting a construction loan and the drawing down of the full amount of the loan?

(770) A. Well, that depends on whether the loan was made to bona fide contractors who operated a construction schedule, of, say, three months for completion, and usually performed that way, or whether—many of our loans we take with the little individual who has got an equity and he is expanding his home, and he does a lot of that, and acts as his own contractor. In those cases that might take nine months.

Q. What was the average time in 1952?

A. I couldn't tell you that, but I would say four or five months.

Q. Yes. And, did you make a substantial amount of loans to building contractors in 1952?

A. Yes, I would think so, we have.

Q. Quite a substantial amount?

A. Of course, we made it on the homes, you understand, not to the contractors.

Q. (By Mr. Klein, continuing): That is right, but they signed the note, did they not?

A. No, sir.

(771) Q. Who signed the note?

A. In most cases—we have an interim finance program where they contract to build a house, and take—we take title to it, and they have a right to buy it back;

but they are building it, many times, of course, they are building it for a specific applicant.

Q. I know, but in those cases you loaned the money to the contractor, did you not?

A. In some of those cases; in others we made it directly to the applicant, with the contractor having the right to make withdrawals.

Q. But in many cases the homes were not sold yet while they were being built by the contractors, were they?

A. In those cases we do it with interim finance, in most cases, where we have title, and he has the right to buy it back.

Q. The contractor?

A. The contractor.

Q. But you would loan him the money, you would take the title, and if and when he would sell it or pay it off, he had—

A. (Interposing): He had the right to do it, yes.

Q. And how much, in dollar amount, would you say you made in loans of that kind in 1952, your best recollection?

A. Give me that (indicating) where we have the construction loans. I would say probably a fourth of the construction loans that were outright were contractors' loans.

(772) Q. (Handing document to the witness.)

A. We showed 101 construction loans; I would say probably 25 or 30 per cent of those would be to contractors.

Q. So that would be around roughly \$200,000, or so?

A. Yes, I think so.

Q. Yes. Now, you say in 1952 there was an excess of demand for mortgages above what the supply of mortgage money was, is that your recollection?

A. In view of the fact that my recollection is that VA was still fairly active in there—

Q. Yes.

A. —I would say, yes, because while that existed the demand was brisk for mortgages.

Q. And that was because of the VA mortgages?

A. In part.

Q. And because VA permitted mortgages up to 20 and 25 years?

A. Right.

Q. And what was the interest rate on VA mortgages?

A. Four and a half per cent, I think, in 1952; I am not sure when the rate changed.

Q. But your association preferred the conventional mortgages, for the most part?

A. Yes.

Q. And on those mortgages you made mortgages for twelve years and seven months at five and one-half to six per cent (773) interest, is that correct, Mr. Gates?

A. Yes.

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(774) Q. Mr. Gates, did you in 1952, did your association exercise a conservative and selective policy in making mortgages?

Mr. Dexter: Your Honor, I wish that Mr. Klein would define those terms. I don't know what a conservative and selective policy is.

Mr. Klein: All right. I will be glad to define them.

Q. (By Mr. Klein): By "selective," I mean if some mortgages were available where you would have to have a higher ratio of mortgage loan on the appraised value, or the borrower had less income or a lower economic standing, or the rate were less desirable, the association would or would not be selective so as to pick those which afforded the greatest security and the highest rate of return consistent with that security?

A. Of course, I will have to qualify that to this extent: That under those conditions, they select themselves. In other words, when the market gets to a higher rate because of shortage, it has its own elimination effect ultimately, and there are those who will pay inside of the current terms, and those who won't.

I wouldn't say, if we had forty applications and we could only make thirty, we wouldn't take the thirty best.

(776) Mr. Klein: Your Honor, we had had marked and identified with Mr. Doty, the Secretary of State's representative, Exhibits 25, 26, 27, 28 and 29, which were the Annual Reports of the Secretary of State to the Governor for the years from June 30, 1947 through June 30, 1951, inclusive.

There has already been offered and admitted in evidence Exhibit 30, for the year ended 1952, and 31 for the year ended June 30, 1953. I would now like to offer Exhibits 25 through 29 into evidence. Those precede the date in question.

The Court: That would be from 1947 to 1949, inclusive?

Mr. Klein: From '47 to '51, inclusive.

The Court: Pardon me. '51, inclusive.

Mr. Klein: Yes.

The Court: All right. What is your thought on that? Entirely aside from these other matters that we have already discussed, which I assume you make the same objection, but as far as the fact that these are for earlier years, have you any objection on that point alone, Mr. Dexter?

Mr. Dexter: Your Honor, I think that we have generally objected on the record to anything other than the year 1952 on any of this, as well as the general objection

as (777) to the materiality of the question of savings and loan associations period.

But that would be our objection there; that they are without the period and they are immaterial in showing competition for the year 1952.

The Court: I think they may be received, the earlier years. It seems to me I can think of some theories.

I am not passing upon the weight or probative force, merely the admissibility.

Mr. Klein: I would like to offer similar reports for the years from June 30, 1954 through June 30, 1957, inclusive, which have been marked Exhibits 32, 33, 34 and 35, the purpose being to show the general trend and development of building and loan associations.

The Court: Those are for the years afterwards?

Mr. Klein: Yes, sir.

The Court: The objection on that is sustained, and they are made a part of the separate record. If later on there is some reason to change my mind, you can pursue the subject further.

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(778) Mr. Dexter: Your Honor, I would object to the admissibility of any of these except the areas—any of Exhibits 25 through 35, except for those associations in the areas of alleged competition of plaintiff. I think the others are definitely immaterial.

The Court: Well, I am inclined to feel they are admissible for the reason—and perhaps that is part of the (779) reason that Mr. Klein has stated—and also because of the language of the decisions upon which you rely—the language of Judge Taft, for instance, in the case in which he decided and others.

It seems to me that if the Court starts out with the pre-conceived idea that Judge Taft had as to the nature

of building and loans, that the plaintiff has a right to dispel that idea by the means at hand,

Now, I don't say they are doing it or have done it. I merely say they have a right to do it, if they can, and it seems to me this might have some effect.

Again, I won't pass upon its weight or its probative force, but it does seem to me it is admissible for the purposes indicated. As far as the actual competition, of course, only the others apply.

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(781) Mr. Klein: Now, we have another matter, sir. There will be some question of Federal statutes and regulations. I haven't checked the Michigan law as to the necessity of proving it, but I think both Mr. Dexter and ourselves will be better off if we could stipulate that all Federal statutes and Federal regulations called to the Court's attention shall be considered just as though they were offered separately in evidence. I don't know if we have to offer them separately, but I have taken the precaution—

The Court: I have the impression that the Federal statutes, at least, we can take judicial notice, but I don't want to venture any—

Mr. Klein (interposing): Are you willing to agree to that, Mr. Dexter?

Mr. Dexter: My understanding has always been—

Mr. Klein: (interposing): Are you willing to agree to that, that we can each refer to Federal statutes and Federal regulations of the court?

Mr. Dexter: Yes.

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(788)

Lansing, Michigan,
Monday, July 14, 1958,
9:30 o'clock A. M.

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Mr. Van Zile: May it please the Court, at this time we would like to offer the depositions and the accompanying affidavits which we took of the Grand Rapids Associations and their managing officers, and also certain affidavits and the depositions which Mr. Dexter has agreed to take in lieu of oral testimony.

We offer first the deposition of George L. Young, president of the Grand Rapids Mutual Federal Savings & Loan Association, taken August 14, 1956, and we offer that as Exhibit No. 73, and also the exhibits which were identified at the taking of his deposition, and which we have renumbered in the order in which they appeared in the deposition as Exhibits 73-A through G.

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Mr. Dexter: No objection, except a continuing one as to materiality.

The Court: Received.

(789) Mr. Van Zile: I might say, in order to expedite matters, the exhibits were marked in advance, and we also in our planning assigned exhibit numbers, so that in some cases there will be no exhibit, but I will mention those as we go along.

There is no Exhibit 74.

Next we would like to offer the affidavit of George L. Young and the exhibits accompanying that affidavit, which are the statements of condition for the years 1947 through 1950 of the Grand Rapids Mutual Federal Savings & Loan Association, which we offer as Exhibit 75, is the affidavit, and Exhibit 75-A is for the year 1947,

75-B for the year 1948, 75-C for the year 1949, and 75-D for the year 1950.

Mr. Dexter: No objection, except a continuing one as to materiality.

The Court: Received.

Mr. Van Zile: We would next like to offer the deposition of Harold O. Swanson, president of the Mutual Home Federal Savings & Loan Association of Grand Rapids.

The deposition we have marked as Exhibit 77. His deposition was combined with that of Mr. Weatherwax in one volume, and we offer as Exhibit 77 pages 1 through 43 of that deposition.

(790) We also offer the exhibits which were identified at the taking of that deposition, which we have re-numbered as Exhibits 77A through N.

While Mr. Dexter is looking through that, I would like to note for the record that there is no Exhibit 76.

Mr. Dexter: There are some pencil notations in Exhibit 77-E, which I assume are not offered as far as the exhibit is concerned. Apparently somebody has looked at it and made some pencil writing. I don't know that it means anything, but this figure here (indicating). You didn't offer that as part of Exhibit 77-E?

Mr. Van Zile: No.

Mr. Dexter: The same is true, there are some pencil notations on 77-D.

The Court: 77-D?

Mr. Dexter: D. With the assumption that those pencil notations are not part of the offer, no objections, except the one as to materiality.

The Court: Received, with that understanding.

Mr. Van Zile: We next offer, as Exhibit 78, the affidavit of Harold O. Swanson, which Mr. Dexter has agreed to in lieu of all testimony of Mr. Swanson, and the exhibits accompanying that affidavit; 78-A being the annual report of Mutual Home Federal Savings & Loan to the Federal Home Loan Bank, as of 12/31/52.

(791) 78-B being the published statement of condition as of 12/31/47.

78-C as of 12/31/48.

78-D as of 12/31/49.

And, 78-E as of 12/31/50.

Mr. Dexter: No objection except as to the materiality.

The Court: It may be received.

Mr. Van Zile: There are no exhibits 79 or 80.

We offer next the deposition of John H. Weatherwax, Secretary of the West Side Federal Savings & Loan Association of Grand Rapids as Exhibit 81, and the accompanying exhibits identified at the taking of that deposition, which we have re-numbered as follows:

81-A is the Charter and By-laws; 81-B is the form of certificate and savings pass book; 81-C is the form of borrower's pass book and certificate; 81-D is the published statement of condition as of 12-31-51; 81-E is the statement of condition as of 12-31-52; 81-F are two forms of applications for loans; 81-G is the form of savings share loan note; 81-H is the form of application for savings membership; 81-I is the form of application for savings membership (joint); 81-J is a summary of loans made from 1946 through 1952, consisting of two pages; 81-K is advertising appearing in 1952.

(792) I might say, too, that the offer of Mr. Weatherwax's deposition being that part of the combined deposition running from page 43 through the balance of the deposition, the first part being that of Mr. Swanson.

Mr. Dexter: No objection except the continuing one of materiality.

The Court: They may be received.

Mr. Van Zile: The next offer is Exhibit 82, the affidavit of John H. Weatherwax, which Mr. Dexter has agreed to accept in lieu of oral testimony; and the exhibits accompanying that affidavit, which are 82-A, the Annual Report of the Association to the Federal Home Loan Bank as of December 31, 1952; 82-B, the published statement as of 12-31-47; 82-C, the published statement as of 12-31-48; 82-D, the published statement as of 12-31-49; and 82-E, the published statement as of 12-31-50.

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Mr. Dexter: No objection, except a continuing one as to materiality.

The Court: Received.

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Mr. Van Zile: There will be no Exhibit 83.

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(793) VAN KEUREN, JAMES I., was thereupon called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

Q. Your name is James I. Van Keuren?

A. Correct.

Q. And you are president of the Capitol Savings & Loan Association of Lansing, Michigan?

A. Yes, sir.

Q. And that Association is incorporated under the laws of what state, sir?

A. Michigan.

Q. Under the Building and Loan—

A. (Interposing): Act 50, 1887.

Q. And when was the Capitol Savings & Loan first incorporated?

A. 1890.

Q. And it has continued in existence by extension of the charter, or was it a perpetual charter?

A. No, it is an extension. 30-year charter. Changed the name two or three times.

Q. And its present name is Capitol Savings & Loan?

A. Association.

Q. And its original name was what, sir?

(794) A. The Capitol Investment & Savings Institution.

Q. And where does the Association have its business offices?

A. Principal office in Lansing and branch offices, two in Detroit and one in Pontiac.

Q. And the Lansing office does business in what area, sir?

A. Central Michigan. Mostly in Ingham County at the present time.

Q. You said you were president, as I recall.

A. President and manager.

Q. And what do your duties entail in that capacity, sir?

A. Supervision of all the offices and trying to form the policy in conjunction with the Board of Directors.

Q. And in that capacity are you responsible for the supervision of the books and accounts and records of the Association?

A. Not entirely. We have people that have charge of that part of it. I don't have time to supervise all the records.

Q. They are directly responsible to you?

A. That is right.

Q. How long have you been with the Association?

A. I am in my thirtieth year.

Q. To get through with some of the formalities first, do you have with you, sir, a form of certificate or evidence of ownership of shares in the Association?

A. I think I have here. This is a full page certificate, and (795) we have an advance pay certificate. I am looking for an option savings book here. We have an option savings in which they pay in odd amounts. I think that is it right there.

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A. Back in 1952 we had an installment savings. I found that book in here. Installment savings plan.

Q. Just so we can identify these, Mr. Van Keuren, Exhibit 84-A is an application for cumulative shares?

A. That is a prepayment. That is a little misleading, that name. They pay in \$80, and they leave it until it matures to \$100 a share.

Q. They make one payment and then it matures at a greater rate, is that it?

A. It all depends. They leave it in a certain time, and before maturity they get a higher rate. If they draw it out before maturity, they get a lesser rate.

Q. And Exhibit 84-A is a certificate for the shares which are issued in respect to that application 84?

A. Yes.

Q. And these were in effect and used in 1952?

A. Yes.

(796) Q. And Exhibit 84-C and D are what, sir?

A. Those are full paid shares at \$100 each.

Q. C is the application for the shares?

A. Yes.

Q. And D is the form of the share?

A. That is right.

Q. The certificate?

A. That is right.

Q. For \$100?

A. \$100.

Q. Full paid?

A. And they receive dividends on those semi, and they are sent by check.

Q. As they are declared?

A. Yes.

Q. And these two Exhibits, 84-C and D, were used in 1952?

A. Yes, sir.

Q. And Exhibit 84-E and Exhibit 84-F are what, sir?

A. Option savings, they term that; they can start an account of \$5 and add to it whenever they see fit. They get the regular dividends—they are credited to the account.

Q. To the extent that there has been investment in the shares?

A. That is right.

Q. And 84-E is the application and 84-F is the pass book?

A. Yes, sir.

(797) Q. Where is the certificate? Is that in the pass book?

A. No, it is right on the back.

Q. I see, in the back of the pass book?

A. Yes.

Q. I see. And that is Exhibit 84-F; and those were used in 1952?

A. Yes, sir.

Q. And 84-G and H are what, sir?

A. Those are, I think, the installment shares—yes.

Q. That is where applicant agrees to pay so much a month?

A. That is right.

Q. In payment of the shares?

A. That is right.

Q. And 84-G is the pass book with the form of certificate in the front?

A. Yes, sir.

Q. And H is the application for such shares?

A. That is right.

Mr. Klein: I should like to offer Exhibit 84, 84-A through 84-H, inclusive, in evidence.

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Mr. Klein: There is no 84-B.

(798) Mr. Dexter: No objection except as to materiality.

The Court: Received:

Q. (By Mr. Klein, continuing): Do you have with you, Mr. Van Keuren, the charter and by-laws of the Association which were in effect in 1952?

A. I think I have somethink like that. Let's see what this is (examining document). This, I think, is the original charter. I am looking for the date. This is in 1934, renewal of the charter. This original charter is pretty near falling apart.

Q. I am asking you originally for the one that was in effect in 1952, Articles and By-laws which were in effect in 1952?

A. You don't care for the original?

Q. Yes, I do later. First I want the one that was in effect in 1952.

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(799) Q. (By Mr. Klein, continuing): Exhibit 85-A-1 . . . is the certificate or the certified copy of the certificate of the Department of State, showing the original articles of association back in 1890, with certain amendments as indicated in the attached document, is that correct?

A. That looks like it, yes.

Q. And Exhibit 85-A-2 is a certified copy of the—

A. (Interposing): The original.

Q. Certain of the articles in 1890, and certain of the by-laws and the extension of time, and so forth, as described in the certificate, is it not, sir?

A. Yes.

Q. And Exhibit 85-A-3 are the by-laws, you say, that were in effect in 1952?

A. Let me look at the date. In 1950.

Q. And was Exhibit 85-A-3, the by-laws, also in effect in 1952?

(800) A. As far as I know they were.

Mr. Klein: I would like to offer Exhibits 85-A-1, 85-A-2, and 85-A-3 into evidence. . . .

Mr. Dexter: No objection to Exhibits 85-A-1, 85-A-2 and 85-A-3 except as to materiality.

The Court: Received.

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Q. (By Mr. Klein): I will show you a printed document, 85-B, consisting of seven pages, marked "Capitol Investment-Building and Loan Association By-Laws," and ask you if those were the original by-laws of the Association when it organized in 1890?

A. As far as I know, they are.

Mr. Klein: I would like to offer Exhibit 85-B into evidence.
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Mr. Dexter: No objection except the continuing one as to materiality.

The Court: Received.

Q. (By Mr. Klein): Did you bring with you, Mr. Van Keuren, a form of application for loan used in 1952?

(801) A. Yes, sir. I think that's it there, application for mortgage loan (handing document to Mr. Klein).

Q. . . . The document which you handed me has been marked Exhibit 86, and you testified, I believe, that is a form of application for mortgage loan used by your Association in 1952?

A. As far as I know. I can't keep track of all the applications. It looks very similar.

Q. And on the reverse side there is a space requiring personal financial statement?

A. That is right.

Q. And income statement?

A. Yes.

Mr. Klein: I would like to offer Exhibit 86 into evidence (handing exhibit to Mr. Dexter).

Mr. Dexter: No objection except as to materiality.

The Court: Received.

The Witness: I might add, sir, that I am informed—I haven't looked it over—but that application required an application for membership in the Association also when they applied for a loan.

Q. (By Mr. Klein): But a borrower did not have to be a member (802) prior to applying for a loan?

A. No. He applied at that same time.

Q. And did he have to make any payment to become a member?

A. No. He had the right of one vote.

Q. But there was no obligation connected with his application for membership?

A. No.

Q. And he did not have to be a member prior to applying for a loan?

A. No. Some of them were members and others weren't, see.

Q. Most of them were not, though, in '52; isn't that correct?

A. I couldn't answer that.

Q. You can't answer that. You do and did in '52 seek loans from all groups and stratas of society in and around the Lansing area, did you not?

A. Well, here is a memorandum. We made 295 loans in our Lansing office in 1952, one million 270 thousand. Now, how many of those were members before they applied, I couldn't tell. They applied for membership when they applied for loans.

Q. And you were asked to prepare that, and we were advised, were we not, that it would be a very voluminous job to make a check of every application?

A. We couldn't do it. It was impossible.

(803) Q. I will show you an exhibit which has been marked Exhibit 36-B, and is on a printed form, "Building and Loan Division, Monthly Report," entitled, "Capitol Savings & Loan," for month ended December 31, 1952, and ask you if you recall that having been filed with the Office of the Secretary of State. It came from his files.

A. We followed the policy of filing monthly reports with the Secretary of State, Building and Loan Division, and this is evidently one of them.

Q. And this report was made out by your Association in the regular course of business and regularly executed and filed in connection with the regular course of business?

A. Yes, sir.

Q. And does it truly and correctly reflect the statement of the assets and liabilities of the Association for the month ended December 31, 1952?

A. Evidently it is as far as I can tell, because I haven't the other figures to refer to.

Mr. Klein: Your Honor will recall these exhibits were introduced when the Secretary of State's representative, Mr. Doty, was on the stand and we had undertaken to ask each witness about the correctness of them, but they were admitted in evidence at that time, I believe, subject to our connecting them with the witness.

Mr. Dexter: And, as I understand, your Honor, (804) subject also to the right of getting the original books and records if we deem necessary.

The Court: That is right.

Q. (By Mr. Klein): I will show you Exhibits which have been offered marked Exhibits 37-I and 37-I-1, which are photostats of the annual reports of the Capitol Savings & Loan Association for the period ended July 30, 1953, and July 30, 1952, respectively. I ask you if they bear your signature?

A. Yes, they do.

Q. And attached to the certificate are annual statements or statements of assets as at the end of those periods; is that correct?

A. Will you allow a correction? You said July 30.

Q. June. I misspoke.

A. That is the end of our fiscal year.

Q. June 30, 1953 and June 30, 1952.

A. That is right.

Q. And the exhibits attached have various figures and there are various reports and statements of accounts and loans and all that in each of the reports?

A. Covers about everything we do.

Q. And were those reports, Exhibits 37-I and 37-I-1, made out in the regular course of business and filed, and was it the regular course of business to make such reports and file the same with the Secretary of State of Michigan?

(805) A. We have to do it. That is, as I say, the end of our fiscal years, and besides the monthly reports.

Q. I see your sworn statement appears there. Are these reports, Exhibits 37-I and I-1 true and correct reports of the facts therein stated?

A. That is right.

Q. As appears from the books and records of your Association?

A. Yes, sir.

Q. Now, Mr. Van Keuren, you stated that your Association operated three offices. Do you have with you a balance sheet of your Lansing office as at 12-31-52?

A. I will look through here and see.

Q. Yes, sir.

A. That is our Lansing, yes, sir.

Q. I will show you a one-page statement marked Exhibit 87 and ask you if that is the financial statement of the Capitol Savings & Loan Company, Lansing office, as at December 31, 1952?

A. It is.

Q. And that truly and correctly shows the assets of the Lansing office and the liabilities of the Lansing office as at that date?

A. Yes, without the carry-over of the branch offices. We had to (806) segregate those from the other offices.

Q. Yes. And that shows, among other things, the mortgage loans outstanding at the Lansing office, conventional, GI and FHA as of that date?

A. Yes, that is right.

Q. And it also shows the shareholders' accounts for the Lansing office as at that date?

A. Yes, sir.

Mr. Klein: I should like to offer Exhibit 87 into evidence.

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Mr. Dexter: No objection, except a continuing one of materiality.

The Court: Received.

Q. (By Mr. Klein): Mr. Van Keuren, did you bring with you a statement showing the number of loans made and the amount thereof in 1952 by your Association in the Lansing area?

A. Yes, sir.

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Q. (By Mr. Klein, continuing): Is Exhibit 88 a statement of the (807) number of loans and the amount thereof made by your Association in the Lansing area in 1952?

A. It is.

Mr. Klein: I would like to offer Exhibit 88 in evidence.

.

Mr. Dexter: No objection except as to materiality.

The Court: It may be received.

Q. (By Mr. Klein, continuing): Exhibit 88 shows that in 1952 the Lansing office of your Association made 295 mortgage loans, the aggregate principal amount of \$1,270,556.10?

A. That is right.

Q. Now, on what types of property were these loans made, Mr. Van Keuren?

A. Residential properties.

Q. Were there any commercial loans at all?

A. No, sir.

Q. None at that time on any—

A. (Interposing): No, sir.

Q. And you made FHA mortgages at that time?

A. A few.

Q. A few. And, what rate ~~do~~ you charge on those FHA mortgages?

(808) A. The rate, if I remember, was either four and a quarter or four and a half plus one-half of one per cent for insurance.

Q. The borrower had to pay that one-half of one per cent for insurance?

A. Yes.

Q. Then if that insurance reserve were not required by the FHA, he had the opportunity of getting that, or some part of it back, as to the extent it was not used by the FHA?

A. Well, if he prepaid that loan, he had to pay a penalty of some sort; I cannot remember what it was.

Q. Talking of the insurance feature?

A. Yes.

Q. But the half of one per cent was to insure all FHA loans, was it?

A. Yes.

Q. And if the insurance wasn't required, to that extent every person paying the one half of one per cent premium would get some part of that back?

A. I couldn't reply to that firmly.

Q. All right, very good.

A. I don't think they had any refund.

Q. What other types of mortgages did you make in 1952, sir?

A. Well, the regular type mortgages.

Q. Conventional, you call them?

A. Yes.

(809) Q. And what term mortgages was your average term, the best you recall, in 1952?

A. Well, I would say from thirteen to sixteen years on the average.

Q. Did you make some for less than thirteen years?

A. Some once in a while, with one per cent payment—would be twelve to thirteen—per cent on the principal.

Q. And what interest rate did you charge on the regular conventional mortgages?

A. That year?

Q. Yes, in 1952.

A. If I remember correctly, it depended on the security, but prime security was five and a half per cent, and some that didn't measure up to the other kind of security we would get six per cent for it.

Q. And on your regular, or conventional mortgages, what was the ratio of the loan to the amount of the appraisal of the property mortgaged?

A. All the way from two-thirds to seventy-five per cent.

Q. Did some of that depend on the financial—

A. (Interposing): The financial ability of the borrower.

Q. Of the borrower.

A. And the type of security.

Q. And the type of security. And, do you know the average amount of your mortgages in 1952, of your regular type of (810) mortgages?

A. I will ask Mr. Clark, do you remember the average amount on that? He is our assistant.

Q. I suppose we can get it by dividing those?

A. Yes.

Q. \$1,270,000 by 295?

A. That is right.

Bob, will you do that for him, please?

Q. Well, it would run about \$4,000 on that one, wouldn't it?

A. It would be, yes.

Q. Around \$4,000, and did you make some GI loans in 1952 also?

A. A few, yes.

Q. And you say you only made a few FHA and a few GI's?

A. That is right.

Q. Was that because the interest rate on the FHA and the GI was lower than the conventional or regular mortgage?

A. I don't think that had so much to do with it as the fact that we didn't have the applications.

Q. Well, the interest was higher, was it not, on the—

A. (Interposing): On the conventional, yes, sir.

Q. And the more mortgage interest you earned, the more dividends you could pay?

A. Well; that would be reasonable.

Q. That is so, isn't it, sir?

A. Yes.

(811) Q. And the more dividends, or the higher rate you paid, the more you could attract depositors—not depositors, savings account holders?

A. That is about right.

Q. Now, did you bring with you any record of the taxes you paid in 1952 at the Lansing office, Mr. Van Keuren? The company paid an intangibles tax generally, didn't it, to the State of Michigan?

A. Yes.

Q. That was on its shares at the rate of 40 cents a thousand; is that correct?

A. I think that's correct.

Q. And then the Association also paid an annual privilege tax to the State of Michigan at what rate, sir?

A. I had that down here somewhere a minute ago.

Q. If I suggested one quarter of a mill, would that—

A. It says here 40 cents per thousand. That was on investments. A quarter of a mill would be on the—

Q. (Interposing): On the outstanding—

A. (Interposing): It is hard to keep all those figures in my mind. I think you are right.

Q. Did you pay a personal property tax in Ingham County in 1952?

A. Yes.

Q. Do you know how much that was and on what it was paid?

A. Well, the personal would be on the furniture and the fixtures.

(812) Q. And it amounted to how much, sir?

A. I couldn't tell you. . . . In addition, we paid our regular real estate tax on the building.

Q. . . . Yes, just like everyone else; is that correct, sir? Just an ad valorem tax?

A. Yes.

Q. Mr. Clark could get for us the amount of the personal property tax paid in?

A. Yes.

Q. But it was solely on the furniture and fixtures?

A. As far as I can remember, that's all it was on.

Q. Now, as I understand, your Lansing office, you have described where you operated in '52 and at the present time?

A. That's right.

(813) Q. When the Association was organized, was it initially in the Lansing area?

A. Yes. In the State of Michigan, I should say, because we had agents at that time all over the state.

Q. And you have had a substantial growth, I take it, from checking these documents, in the last number of years?

A. Well, we have had a substantial growth. Not exorbitant. Since 1952—I was looking at the statement here—we have doubled our assets—more than doubled.

Q. Since 1952?

A. Yes.

Q. And that is a result of your getting increased savings?

Mr. Dexter: Your Honor, I request that that statement be stricken from the record.

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(814) Mr. Klein: All right. I would like that on a separate record, then, sir.

The Court: All right.

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Q. Is the person who becomes a shareholder of the Association a creditor of the Association?

A. No, he is not.

Q. What is his right or relationship with the Association?

A. He is a member on a cooperative basis. They all share alike.

Q. Just like all shareholders of a corporation?

A. No, no. I beg your pardon.

Q. Share alike in what respect, sir?

A. In investment and withdrawal privileges.

Q. But he is a shareholder, is he not?

(815) A. He is a member, first.

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Q. Was there any guaranteed rate of dividend in 1952?

A. No, sir.

Q. Were dividends declared dependent upon the earnings of the (816) Association?

A. Absolutely.

Q. And if the earnings are down, the dividends are down, is that it?

A. Sure. During the depression our dividends were down, and then when business picked up, we raised our dividends.

Q. And if the Association earns a higher rate of interest, it is enabled to make more money and declare greater dividends?

A. As a rule that would apply.

Q. Did the Association in 1952 seek investors in shares?

A. Oh, we did advertising, the same as we always have, and we had certain agents around the state that would send us in investments, on which we paid them a small commission.

Q. So you tried to get as many investors in shares as you could?

A. Nothing unusual. It is a normal basis that we advertise.

Q. Right. And was there any limit on the amount of deposits or share investments you would take?

A. Yes, sir.

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(817) Q. Did your Association in 1952 appeal or (818) solicit investors in shares from any particular economic strata of investors, or did you appeal to anyone who was ready and willing to invest?

A. The general public. We didn't care for corporation investments or funds that were in trust for certain purposes. That would be like church funds or building a church. We have that. They want to put in money. We had one just the other day. They wanted to put in \$25,000 to build a church. Well, how soon will they start? "As soon as we get more money." We didn't like that kind of investment.

Q. You wanted a long range investment?

A. The individual investment.

Q. Did you have any corporate investors in 1952?

A. I couldn't answer that offhand. If we had, it was very few.

Q. Did you have any trusts in 1952?

A. Have any what?

Q. Trust investments?

A. I couldn't answer that.

Q. Any municipal or governmental agencies in 1952?

A. No. That was a time we had some school funds, you remember, and they ruled against us, that we did not have any right to carry it.

Q. Did you appeal solely to poor people as investors?

A. General public, not any class.

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(819) Mr. Klein: Your Honor, Mr. Clark of the Association is going to furnish us with information about the personal property tax paid in Lansing in 1952. And, other than that, we have no further questions of this witness.

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(820)

Cross Examination

By Mr. Dexter:

Q. Mr. Van Keuren, do you have here with you a certificate of membership for a borrower member?

A. I think that is it right there (handing document to Mr. Dexter).

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A. That was back in 1952, I think.

Q. Effective in 1952?

A. And later on we have a certificate—

Q. (Interposing): This is all we are interested in.

A. O. K.

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(Thereupon the document above referred to was marked by the reporter as Plaintiff's Exhibit 84-I.)

A. In addition to that, we have another certificate of membership for land contract purchasers; that was for the mortgage.

Q. Was that in effect in 1952?

A. That is what I understand.

Mr. Dexter: I would like to offer this as Exhibit 84-J.

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(821) Mr. Dexter: . . . I would like to offer Exhibit 84-I and 84-J.

Mr. Klein: No objection.

The Court: Received.

Q. To your knowledge, Mr. Van Keuren, was there any difference between the certificate of membership for a borrowing member and that of an account member?

A. Investment member?

Q. During 1952?

A. Well, there was a difference in the voting privilege.

Q. Was there any difference in the certificates themselves?

A. Well, an investing member has a different certificate than a borrowing member.

Q. Are they the same?

A. As far as membership is concerned, yes.

Q. And the nature of their membership is identical as far as the right to vote?

A. No; the borrowing member has a vote, one vote. Now, just (822) a minute, if he had three loans, he had three votes. The investing member, if he had \$10,000 he could—he had a limit of four votes.

Q. I am speaking about what rights flow from being able to vote; are the voting privileges identical?

A. As far as I know, yes, except—

Q. (Interposing): In other words, a borrowing member and an account member would have the same privileges of voting at your annual meetings, for example?

A. Except the number of votes.

Q. Except with that qualification?

A. Yes.

Q. And he would have the same right, for example, to vote for the board of directors?

A. Yes.

(823) Q. To vote in reference to any policy determinations that were considered at the annual meeting, the same as an account member?

A. They all have the same privilege.

• • • • •
Re-direct Examination

By Mr. Klein:

Q. Mr. Van Keuren, on this voting matter, an investor, solely an investor who was not a borrower, how would his voting rights be determined?

A. He was qualified to vote only four votes, no matter if he had \$10,000. A hundred votes, he could only vote four. A borrowing member, if he had one vote, could have one vote. If he had three loans or five loans, he had five votes.

Q. All this is set out in your by-laws, I think.

A. Yes, sir.

(824) SIBILSKY, CHESTER J., was thereupon called as a witness on behalf of the plaintiff, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Mr. Sibilsky, you are the manager of the Flint office of the Detroit and Northern Savings & Loan Association?

A. Yes, sir.

Q. And how long have you held that position?

A. Since 1919.

Q. So that you did occupy that position in 1952?

A. I did.

Q. And as manager did you have supervision of the affairs of the Flint office?

A. Yes, sir.

Q. And Detroit and Northern has a number of offices does it not?

A. Yes.

Q. And where are those offices located?

A. We have two in Flint and three in Detroit, the home office in Hancock.

Q. The home office is in Hancock?

A. That is right.

Q. All the questions I ask will be directed to 1952, unless I indicate otherwise.

Did you bring with you a form of certificate or (825) evidence of ownership of shares in your association that were in use in 1952?

A. I did, sir.

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Q. I will show you a certificate which we have had marked Exhibit 89-A and ask you to identify it.

A. It is a certificate of fully paid.

Q. And 89-B is what?

A. An installment savings account with the certificate in the passbook.

Mr. Van Zile: I will offer Exhibits 89-A and B.

Mr. Dexter: No objection except a continuing one as to materiality.

The Court: Received.

Q. (By Mr. Van Zile): Did you bring with you the Charter and By-laws which were in use in 1952, Mr. Sibilsky?

A. These are certified copies.

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(826) Q. I will show you exhibits which have been marked Exhibits 90-A and 90-B and ask you to identify them.

A. 90-A is a copy of the By-laws of the Association up to 1950, and the other one is the copy of the By-laws used since 1952.

Q. What date in '52?

A. March 11.

Q. So that between Exhibit 90-A and 90-B they reflect the By-laws governing your association for the entire year 1952, is that correct?

A. Yes.

Mr. Van Zile: I will offer Exhibits 90-A and B.

Mr. Dexter: No objection except a continuing one as to materiality.

The Court: Received.

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(827) Q. (By Mr. Van Zile): I will show you a document that has been marked Exhibit 90-C and ask you what that is?

A. That is a copy of the original charter and by-laws.

Q. The original charter and by-laws of the Association?

A. Of the Association.

Q. And a document that has been marked Exhibit 90-D, and ask you what that is?

A. That is a copy of the change in the name.

Q. And what is the date of that?

A. 1914.

Q. And Exhibit 90-E?

A. That's a copy of the franchise to continue the corporate existence of the Association in 1918.

Q. That is an extension of the corporate existence?

A. Yes.

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Q. And Exhibit 90-F?

A. That is also a copy of the extension of the corporate existence in 1948.

Q. And Exhibit 90-G?

A. That's a copy of the change of name in 1950.

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(828) Mrs. Van Zile: I offer Exhibits 90-C through 90-G

Mr. Dexter: No objection except the continuing one as to materiality.

The Court: Received.

Q. (By Mr. Van Zile): And do Exhibits 90-C through 90-G represent all the changes that have taken place in the Articles of the Association of the Detroit & Northern, Mr. Sibilsky?

A. So far as I know.

Q. Did you bring with you a form of application for mortgage loan used by your Association in 1952? * * *
And is Exhibit 91 the application for mortgage loan used by your Association in 1952?

A. That is correct.

Mr. Van Zile: I will offer Exhibit 91 * * *.

Mr. Dexter: No objection except as to materiality.

The Court: Received.

* * *

(829) Q. Have you brought with you a balance sheet showing the financial condition of the Flint office of the Detroit & Northern Savings & Loan Association as of December 31, 1952?

A. I have sir * * *.

* * *

Q. That includes both offices in the Flint area?

(830) A. Yes. We only had one office at that time.

Q. You only had one office at that time?

A. Yes.

* * *

Q. I will ask you to explain what Exhibit 92 is.

A. That is a balance sheet of the Flint office on December 31, 1952, and likewise it shows the amount of mortgages made in the year 1952.

Mr. Van Zile: I will offer Exhibit 92 * * *.

(831) Mr. Dexter: No objection except as to the continuing one as to materiality.

The Court: Received.

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Q. * * * I will show you what has been marked as Exhibit 37-E and E-1, and ask you if you can identify those, Mr. Sibilsky?

A. Well, I presume they are correct, if they were taken from the Secretary of State's office; I have no direct knowledge of it.

Q. Is the same thing true of E-1?

A. Yes.

Q. One is an annual report to the Secretary of State, that being 37-E-1, for the fiscal year ending June 30, 1952, and 37-E being for the fiscal year ending June 30, 1953, right?

A. Yes.

Q. Are you familiar with Mr. Seaton's handwriting?

A. Yes.

Q. Is that his signature that appears there?

A. It looks like it.

(832) Mr. Van Zile: there will be no Exhibit 93.

Q. Did you have anything to do with the payment of any taxes by Detroit and Northern?

A. Just local.

Q. Well, what local taxes did you pay?

A. City and county, property tax.

Q. Were they real property taxes?

A. Yes.

Q. Did you pay any personal property tax?

A. Yes.

Q. You did. Do you know how much the personal property tax was; (833) how it was computed?

A. I don't know; I don't know the figures; I know we paid them.

Q. Can you obtain that information for us?

A. Yes.

Q. Was the tax based upon your furniture, fixtures and equipment?

A. Yes.

Q. Referring to Exhibit 92, would that be the figure, \$4,536.59 for furniture, fixtures and equipment?

A. Approximately; that is our depreciation; the city may not be the same, but that is approximate.

Q. So that the tax was based on approximately \$4,500, is that right?

A. Yes.

Q. And in what area does the Flint office of Detroit and Northern do business?

A. Genesee County.

Q. . . . And, is that true as to both investors and borrowers?

A. No, investors might be outside the county.

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Q. Borrower would be in the county in all cases?

A. Yes.

Q. What types of mortgage loans did you make in 1952?

A. Conventional and G. I.

(834) Q. Did you make any F. H. A.?

A. No.

Q. And that includes both secured and unsecured?

A. Secured; they are all secured loans; we made no F. H. A. at any time.

Q. You made no modernization or repair loans in the F. H. A.?

A. No.

Q. What other companies were making mortgage loans in 1952 in that area?

A. All the four banks; Genesee, and the Merchants and the Citizens Commercial, the Michigan National; some insurance companies.

Q. First Federal Savings?

A. First Federal Savings, yes.

Q. That was in the same area?

A. The same area.

Q. And in your dealings with investors and borrowers, did you deal with any particular economic class?

A. No.

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(835)

Cross Examination

By Mr. Dexter:

Q. Is your Association, or was it, run in 1952 in accordance with the by-laws and the statutes of the state of Michigan?

A. Oh, yes.

Q. That is, none of your operations contravened either by-laws or the Michigan statutes regarding savings and loan associations in 1952?

A. No.

Q. By examination of your by-laws and the statutes, you can determine the kind of activity you were engaged in and the purposes for which you were incorporated?

A. Yes.

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Q. Now, as I understand your Association, as well as other (836) associations, have two types of members, is that true?

A. That is correct.

Q. You have what is referred to—would you describe those two types of members your Association has?

A. The savings customer purchases shares in the association. He becomes a member. And, the borrower likewise becomes a member when he takes out a loan.

Q. Is there any difference between these two types of membership?

A. Nothing.

Q. Does the savings member have any different voting rights or privileges than the borrowing member?

A. No.

Q. In other words, each would have one vote?

A. One vote per member.

Q. And each would be entitled, in reference to that vote, to participate equally in the management and operation of the savings and loan association?

A. Yes, he has the same vote, either one.

Q. As I understand it, your association, as these other associations; is purely mutual in character. Now, would you explain the nature of this mutuality, if you know?

(837) A. Well, to start out with, you need the savings customer, he comes first, because you have to have the funds, naturally, before you can make the loans; and the savings customer naturally participates in the dividends; he becomes a member the same as a borrower becomes a member as soon as he takes out a loan. They share equally at the annual meetings, voting, and one provides the income from which you pay the dividends, the savings customer.

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(839) Q. As I understand it, you have members that are actually voting members of the association that are borrowers on an equal standing with members of the association that have savings accounts or are depositors or shareholders; is that correct?

A. Yes, sir.

Q. I am asking you how you really take into consideration and if you do take into consideration the interests of the borrowers as a member in the operations of your organization.

A. Well, we have at times reduced interest rates on mortgages regardless of the rate that the loan was negotiated on.

Q. In other words, there have been times where you have across the board ~~reduced~~ interest rates on outstanding mortgages for your borrower members?

A. That is correct.

Q. And was that done in 1952?

A. I don't recall any in '52, but it has been done in this present year and prior to '52.

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(840) Q. . . . I am talking about mortgages that have already been outstanding. You understand that, don't you?

A. Yes, sir.

Q. Not the current mortgages that you are making, but you have reduced the interest rates across the board on outstanding mortgages at the time that action was taken?

(841) A. That is right.

Q. Will you explain why you took such action?

A. Well, of course, in some cases it was because we changed our current rate, so we went back and reduced the rate on some of the previous ones to the same rate as our current charge.

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(842) Q. (By Mr. Dexter): Is there any distinction made at the annual meeting between a borrower and a saver member?

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A. There is no difference.

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(843) Q. Was any identification made in the year 1952 or years preceding that between a borrower member and a savings member at your annual meetings?

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A. No, there was no identification in either of them.

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Q. (By Mr. Dexter): At your annual meetings has there been any voting permitted by proxy?

A. No.

Q. That would include the year 1952 and the preceding years?

A. There are no proxies allowed.

Q. Now, as I understand it, you did not have much activity in FHA mortgages in 1952?

A. We had none.

Q. Do you know why you did not have?

A. Well, for one thing, it is because of the policy of the Board, (844) and that is because our conventional loan is much more favorable to the borrower.

Q. What do you mean by that?

A. Well, the terms. On our form of mortgage, he has no prepayment penalty. He also has the privilege of paying his account in advance. He can pay any amount he wishes. It doesn't have to be in multiples of the monthly payment.

You have a chance to deal with him at your own direction, rather than being told by the FHA how you should deal with your delinquencies. You have to report them under their rules, and he gets a lot better contract with a conventional mortgage.

Q. What was your policy in 1952 about delinquencies—that is, people that were delinquent on their mortgage?

A. So long as we felt they were doing the best they could, we just carried them along. Sometimes reduced the payment temporarily.

Q. And in reducing the payment, for example, did you rewrite the mortgage?

A. No.

Q. It wasn't a matter of refinancing, then?

A. No; no charges or expenses.

Q. So when you reduced the payment, you did not change the mortgage or the note?

A. That's right.

(845) Q. Do you go to the directors for approval of a reduction in payment?

A. No. The manager has that discretion, subject, of course, to the Board probably reviewing your actions.

Q. Would the overall reduction in interest of outstanding mortgages reduce your earnings?

A. Oh, yes.

Q. And would that reduce your ability to pay dividends on the share accounts?

A. Well, it probably would have some bearing on whether you could increase the dividend or not.

Q. It would actually decrease your earnings?

A. Absolutely.

Q. And you have to pay dividends to your share accounts out of earnings?

A. Yes, sir.

Q. And therefore, it would, as I understand it, decrease your ability to pay dividends?

A. Yes.

Q. In 1952 did you refinance FHA mortgages acquired elsewhere?

A. We could have. I wouldn't be sure.

Q. You don't know whether you did or not?

A. No. We did some refinancing, but I don't know whether—

(846) Q. I would like to show you Exhibit 93 and ask you to identify it, please?

A. It is a specimen or a copy of the mortgage note that we used.

Q. Is that the copy of the mortgage note form that you used in 1952?

A. Yes, sir.

Q. You used that in all your conventional mortgages?

A. Conventional mortgages, yes.

Q. And did all of the mortgage notes then contain this paragraph that you had in 1952:

"In the event of advance payments, this note shall not be in default as long as the unpaid indebtedness is less than the amount that said indebtedness would have been had the monthly payments been made under the terms of this note."

Mr. Dexter: . . . I offer it . . .

Mr. Van Zile: No objection.

The Court: Received.

Q. Will you answer the question?

A. It is a copy of the note we used on all conventional mortgages.

Q. The clause I read to you appeared in each one?

A. That's right.

(847) Q. How long did it take you in 1952 to close a conventional mortgage, approximately?

A. Oh, the average, a week.

Q. Well, do you know how long it normally took in '52 to close an FHA mortgage?

A. Probably four to six weeks.

Q. (By Mr. Dexter): What would your normal costs be in 1952 in regard to closing a conventional mortgage?

A. About \$38, on the average.

Q. What would the \$38 consist of?

A. Recording fees and attorney fees, examination of the title, (848) and appraisal.

The Court: How about the bringing down of the abstract?

A. That wouldn't be part of our cost. The borrower or purchaser probably would pay that. There would be an abstract billed, yes; that is not included.

The Court: This is the cost to you then?

A. That is right.

Q. What would be the cost to the member borrower?

A. Our cost would be about \$38 to the borrower.

Q. I see. That would be a cost that you would have the borrower pay?

A. That is right.

Q. And that would be all his costs?

A. Yes.

Q. Except bringing down the abstract?

A. Posting the abstract, if it was his property, or he was acquiring it, the deed holder would.

Q. Then basically that would be all of his costs, the \$38, between what you would pay and he would have to pay?

A. Well, that, of course, would be a little higher if it was a construction loan where we advance the money as the house (849) was being built; there would be an extra charge then, half of one per cent.

Q. You don't know what percentages of your business in 1952, your mortgage business, was construction loans?

A. No, I do not have—it is very high.

Q. What service did this charge for construction loans represent?

A. Well, it meant we would inspect the property probably every week, or sometimes every two weeks, depending on the progress; and we would see that all the bills were paid and take waiver of liens from them. Sometimes make direct disbursements to the sub-contractors.

Q. To check to see the borrower was protected?

A. That is right.

Q. If he had a contractor?

A. Another advantage of the commercial loan of your own—he doesn't have to have a contractor, if he wants to build a house through us he can act as his own contractor.

Q. You had many situations like that in 1952?

A. Oh, yes, sure.

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(850)

Re-direct Examination

By Mr. Van Zile:

Q. What was the rate of interest which you charged your mortgage borrowers in 1952?

(851) A. Five per cent on conventional.

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Q. And what was the term?

A. Oh, it varied from ten to twenty years.

Q. What was the average?

A. The average would be about fourteen years.

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Q. And are you familiar with what the interest charge was on FHA mortgages?

A. No.

Q. You don't know?

A. No.

Q. Do you know anything about the term of FHA mortgages?

A. I would say no, not exactly.

Q. I notice that you had V. A. mortgages?

A. That is right.

Q. What was the rate of interest on the V. A. mortgages?

A. Four per cent.

Q. And what was the term on V. A. mortgages?

A. Twenty years.

Q. And how long did it take to clear a V. A. mortgage?

(852) A. Three to four weeks.

Q. About the same time as an F. H. A.?

A. Right, about.

Q. Well, now, you have said, as I understand your replies to Mr. Dexter, that the conventional mortgage was a better contract than the F. H. A. mortgage, is that correct?

A. Yes.

Q. And you stated that your interest rate was five per cent, and you didn't know what the interest rate was on F. H. A.?

A. Right.

Q. Yes. Well, how can you say that it is a better contract without knowing what the interest rate was? Isn't that important to the borrower?

A. Yes.

Q. How about the V. A. mortgage; was that a better or a worse mortgage than your conventionals?

A. Well, it was made on the same form as the conventional mortgage.

Q. It was?

A. Except as to rate, yes.

Q. Well, then, there was no difference between the V. A. and the conventional, in your opinion?

A. Only as to rate.

Q. Only as to rate?

A. Yes.

(853) Q. Which was the better contract?

A. Both the same; they had the same privileges as a conventional.

Q. Although he paid a lower interest rate, that doesn't alter your opinion that they were about the same, is that right?

A. Well, if they get the same privileges.

Q. Is there any reason why, to your knowledge, that the Association had a policy against F. H. A. mortgages, but did take V. A. mortgages?

A. Probably some patriotism involved.

Q. Do you know?

A. Some patriotism involved, yes. We were anxious to help the G. I. We made the first G. I. loan in Flint. The Board felt that they should help the G. I.'s out.

Q. Well, you are not familiar with the purposes of the F. H. A. mortgage?

A. Well, some. As you probably know, if you make an F. H. A. mortgage they discount them anyway; you wind up the same place as if you are making a conventional mortgage; you make about the same return by discounting the F. H. A. mortgage when you make it.

Q. But nonetheless you didn't take any F. H. A. mortgages?

A. No. If we had, we would have discounted them the same as the others were doing, so they would average up with our conventional earnings; the earnings you make on the conventionals come out the same place.

(854) Q. But you don't know about the F. H. A. mortgages in detail?

A. I know how they made them, yes; I know they discounted them.

Q. Now, let's get back to this borrower-investor. An investor did not have to be a borrower, did he?

A. No.

Q. Nor did a borrower have to be an investor?

A. No.

Q. And if a man walked in your door he didn't have to be a member to apply for a loan, did he?

A. No.

Q. And how many votes, or what sort of a membership did he get when he borrowed money from you?

A. Well, when he became a member he had one vote.

Q. And how many votes did the investing member have?

A. One vote.

Q. For what—regardless of the size of his investment?

A. That is right.

Q. Just one vote?

A. That is right—or, regardless of the size of the loan, he had one vote.

Q. Have you any idea of your own knowledge what percentage of your members showed up to vote at your annual meetings?

A. No, I haven't.

Q. What interest did the borrowing member have, if any, in your reserves and undivided profits—the borrowing member?

(855) A. I don't know.

Q. He didn't have any, did he?

A. Sure, he did.

Q. Did he receive any dividends?

A. No.

Q. When he paid up his loan did he get a part of that reserve and undivided profits, to your knowledge?

A. No.

Q. Did he have any obligation to the Association other than to pay the interest and principal on his mortgage?

A. Well, as long as he was a member he had some obligation.

Q. What obligations?

A. If he paid it up, naturally there was no further obligation.

Q. Did he have any obligations while he was in the process of paying, other than paying?

A. No.

Q. You have no idea, as I understand it, what percentage of your borrowing members were investors?

A. No, I don't.

Q. Now, subject to our objection, I would like to inquire as to this across-the-board-reduction in interest rates.

When did this occur, these reductions, in point of time, exactly when?

A. I couldn't give you the exact dates, except the recent one, which was in—

(856) Q. (Interposing): No, I am not interested in the recent one; I mean 1952 or prior thereto?

A. I couldn't give you the exact date.

Q. Well, how many were there?

A. I wouldn't know that either.

Q. Were there more than one?

A. Oh, yes.

Q. What years, do you remember?

A. No, I don't.

Q. Have any occurred since the war?

A. Since the last war?

Q. Yes, World War II?

A. Yes, this year.

Q. No, not this year, other than this year?

A. I think so, yes.

Q. You think so?

A. Prior to 1952, yes.

Q. Can you find out exactly when those occurred, and inform us?

A. I think so.

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(857) Q. Did it have anything to do with the fact that interest rates generally were going down when those occasions happened?

A. Probably so.

Q. Probably. So that somebody else might have refinanced, is that right?

A. In some instances, probably could be.

(858) Q. Wouldn't that be the principal reason for such a reduction?

A. No.

Q. What other reason would there be?

A. Make a good customer out of the borrower. He comes back. It just isn't a one-time deal with the borrower. In his lifetime you get him back probably three times if you treat him right.

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(861) Q. Mr. Sibilsky, on your conventional mortgages could you tell us the average amount which you required to be required as a down payment in percentages of the total amount loaned?

A. Average would be about one-third.

Q. So that on a \$12,000 mortgage, you would require \$4,000 down payment, is that correct?

A. Well, on the average. In some cases, less than that.

Mr. Dexter: I assume, Mr. Van Zile, you meant valuation. You said \$12,000 mortgage.

Q. (By Mr. Van Zile): I am talking about a \$12,000 loan. Are we speaking of the same language?

A. You mean the loan or the value of \$12,000? You pay a third down on a \$12,000 valuation. Be \$8,000.

Q. An \$8,000 loan?

A. Mortgage.

Q. And you would require \$3,000 down payment on the average?

A. Well, that would be 25 per cent. There are some who require \$3,000. Some would be four. With this new construction, probably would be \$3,000.

Q. When you said on the average one third, what were you speaking of in terms of one-third of what?

A. Of the appraisal.

Q. Of the appraised value?

A. Or purchase price.

Q. Now, on this reduction in interest rate on the mortgages, (862) Mr. Sibilsky, was that a reduction that took place in Flint alone?

A. No, it affected Detroit.

Q. And Hancock?

A. Yes.

Q. You are sure of that?

A. Quite sure.

Q. And when a borrowing member pays up his loan, his membership in the organization, as I understood you to say, ceases. Is that right?

A. Yes.

Q. I mean he is no longer a member?

A. No.

Q. In 1952 were you advertising for investors?

A. Yes.

Q. And you featured in those ads the rate of dividend, did you not?

Q. Probably, yes.

Q. And was that not a primary attraction for investors, the rate of dividend which you were paying currently?

A. That would be one.

Q. Well, isn't that the principal reason?

A. The rate, and the fact that it was insured, probably the two together.

Q. And have your dividend rates increased all the years?

(863) A. Yes.

Q. Now, so far as investors were concerned, you had many more investor shareholders than you did borrower shareholders, did you not?

A. I would say yes.

Q. About three times as many, did you not?

A. I couldn't say that for sure.

Q. What would you say?

A. I would say twice as many.

Q. And not all of your borrowing members were investors; isn't that so?

A. Yes.

Q. So that only a small percentage of your membership would be both investors and borrowers at the same time; isn't that true?

A. I would say yes.

(864) Q. . . . So far as you were concerned in your association, you were trying, were you not, to earn

as much as you could so that you could pay as high a rate of return on the investments as possible; is that not so?

A. That's generally true.

Q. That was an obligation that you felt you had to your shareholders; isn't that so?

A. Well, naturally you expect to pay them a fair return, and naturally you would have to earn it in order to attract a customer, a savings customer.

Q. Well, consistent with good business practice, what you were interested in was earning as much as you could so that you could pay them as much as you could; is that not right?

A. Well, not always.

Q. Are your dividends based on your earnings?

A. Yes.

Q. Now, what type of investors did you have, Mr. Sibilsky?

A. Well, installment savings and fully paid.

Q. Yes, but I mean by types, I mean did you have individuals investing with you?

A. Most of them would be individuals, yes.

Q. Corporations?

A. I don't believe any corporations.

Q. Partnerships?

A. Some partnerships.

(865) Q. Trusts?

A. Probably trusts, a few.

Q. Any other types?

A. Offhand I don't recall any. There were very few anyway, total.

Q. And those persons investing with you other than individuals would not be interested in borrowing money from your association, would they?

A. Probably not.

Re-cross Examination

By Mr. Dexter:

Q. When did you open your Flint office?

A. About 1915.

Q. And how long have you been in that office?

A. Since 1919.

Q. During the time that you were in the Flint office, has any member that has a share or savings account with you received anything besides the principal amount plus the dividends?

A. No.

Q. What was the reason, if you know, for the office being opened up in Flint?

A. Well, they received a request from the Chamber of Commerce (866) at that time to open an office in Flint, and they agreed to support the institution if we would open an office by subscribing for shares, and so on.

Q. And what was the particular situation in Flint that required the Chamber of Commerce to make that kind of an approach to you?

Mr. Van Zile: I will object to that question on the grounds of materiality.

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The Court: You can make it on a separate record, if you wish.

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Q. (By Mr. Dexter): Will you explain the purpose?

A. They needed housing. They were very short of housing, and the automobile industry was expanding. They were very badly in need of housing. That was the reason they asked us to come in and open an office.

(867)• Q. In other words, to make available mortgage money?

A. Mortgage money for particularly new construction.

Q. And is that primarily the purpose for which you operated in Flint in 1952?

A. Oh, yes.

Q. That is to make available mortgage money?

A. To create new home owners.

Q. And don't you base your current dividend rate, and did in 1952, in order to get money that you might make mortgages for home ownership?

A. That is our source of income for making mortgages.

Q. Would you have any interest in getting any share of deposit account money over and above a mortgage demand?

A. No, not particularly, not in Flint.

Q. Your basic purpose then, as I understand it, when you came into Flint, in 1952, was to make available mortgage money?

A. That is correct.

Q. And has that always been your purpose?

A. Absolutely.

Q. And you would vary your current dividend in order that you might get money available to loan for mortgages?

A. That is correct too.

Q. Is that in accordance with the basic purpose of your institution?

A. Yes, sir.

(368) Q. Is that spelled out in your by-laws?

A. That is in the by-laws, yes, sir.

Q. Now, Mr. Van Zile asked you that if a borrower member paid off his indebtedness to your Association, that he was no longer a member. You meant no longer a borrower member, did you not?

A. That is right.

Q. That same individual could have been a savings member at the same time?

A. He could have been, yes; a lot of them do.

Q. Now, as I understand, your share accounts increased considerably in 1952, for example, over what it was previous to that time?

A. Yes.

Q. When you take in additional savings account money, what happens to the value of the surplus and reserve per dollar of investment? * * * Would it go up or would it go down?

A. It might go down in proportion to the amount of reserves or profit, if you increased your savings over a period of time.

Q. Does each depositor, or shareholder, or savings account person participate—pay any additional amount to become a member over and above the face amount of the certificate?

A. No.

(869) Q. Does he have the same interest as a member that had been there for twenty years, say?

A. Absolutely.

Q. And if this new member came in, then the surplus and reserve per dollar investment would be reduced at that particular time because of the additional investment?

A. To some extent.

Q. Now, the question was asked if you received trust deposit, and I think you said "Yes." By that did you mean the fiduciaries depositing trust funds with you?

A. Sometimes, yes, for minors.

Q. It wasn't a trust as such?

A. No.

Q. You have no Trust Department, or carry on trust activities?

A. No; or in relation of guardianship.

Q. Now, do borrower members become share account members, and vice versa? Is there a changing situation there continuously?

A. I don't quite get it.

Q. Well, in the history of your institution, prior to 1952, and up to 1952, do people that have been borrowing members become savings members?

A. Oh, yes.

Q. And people who have been savings members become borrowing members?

A. Surely.

(870) Q. And I assume from time to time that a certain percentage of them are both?

A. That is right.

Q. Now, during your employment with the Association in Flint, has there been any change in the nature of your Association, basic change in its purpose?

A. No change in the purpose.

Q. Do you conduct your business, or did you in 1952 in the same way as you did from the time the office was opened in Flint?

A. Certainly.

Q. You got money from the same class of people generally?

A. Same class.

Q. Did you place your mortgages generally with the same class of people in '52 as you did in the period of time prior to that time?

A. Yes.

Q. As I understand it, all your mortgages were on residential properties?

A. Yes.

Q. That was 100 per cent in '52?

A. Yes.

Q. As a manager, do you have any greater interest in the borrower or investor member?

A. I don't know how you could define it greater, but we have about the same interest in both. We need both of them. (S71) We cater to the borrower because that means the business. The average borrower today probably will own three homes at least during his lifetime, or his children, so we cater to them.

Q. Is there any way that either the borrower or investor would stand to gain by growth in your institution in terms of size?

A. Well, just probably get a larger dividend.

Q. You mean size alone determines the amount of dividend, that is, whether you have got \$20,000,000 in accounts and \$20,000,000 in borrowed money or whether it is ten?

A. Well, I think as your institution grows, naturally your earnings grow in size.

Q. . . . In other words, what is the difference in an investor's position in your organization when it had investors in smaller number and invested moneys in smaller amount than it would be when both of those were greater?

A. Well, I would say years back he probably got a larger return on his investment than he has in late years.

Q. In other words, the expanding nature of the thing has decreased any interest (S72) he might have in this surplus and reserve?

A. Yes.

Q. If, as an example, you had a depositor in 1919 when you opened your Flint office of \$5,000, would his interest be any different in 1952 if he had left it there?

A. He received a greater return on his investment in 1919 percentagewise than he did in '52.

Q. . . . He would participate in the same way, would he not?

A. Yes.

Q. In other words, if in 1952 he wanted—he could have been discontinued as a member, could he not?

A. Yes.

(873) Q. And if he had, he would have gotten back the principal amount he put in plus the dividends that have been paid?

A. Right.

Q. He would not have shared in anything else in the organization?

A. No.

Q. He would have been exactly the same type of person who made an investment in 1952?

A. That is right.

Re-direct Examination

By Mr. Van Zile:

Q. Now, you say that your business hasn't changed particularly since 1919 and 1952; is that correct?

A. Well, the method of operation hasn't changed.

Q. Your method of operation. You have testified that you dealt with all members of the public, as I understand it, both investors and borrowers, in 1952?

A. Yes.

Q. That was also true in 1915?

A. That's right.

Q. Did your borrower in 1952 have to subscribe for a certain number of shares in your organization?

(874) A. In '52, yes.

Q. How many shares did he have to subscribe for?

A. One share for each \$100.

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Q. . . . Your borrowing member?

A. Well, that was the basis on which we used to issue certificates, yes.

Q. In 1952?

A. No, no.

Q. Well, what was the situation in 1952 so far as the borrowing member was concerned?

A. He just became a member, that's all, without any particular—

Q. (Interposing): But in 1919 he had to subscribe for a certain number of shares, did he not?

A. I couldn't answer that.

Q. Have your dividend rates gone up from time to time, Mr. Sibilsky, since 1919, or what has been the situation?

A. They went down from—do you want the rates?

Q. Yes.

A. I think from five per cent down as low as two, and then back up to two and one-half and three.

Q. And the two per cent, I suppose, was during the depression years?

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(875) A. Yes.

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Q. Now, you say that you like to get the same customer back because he may buy three homes during his lifetime?

A. Yes.

Q. And I understand from what you testified to before that there were other institutions in Flint that were also in the home financing market?

A. That's right.

(876) Q. . . . What were the other institutions trying to do in that respect, Mr. Sibilsky, to your knowledge?

A. I presume they were advertising for mortgage loans, the same as we were.

(877) CLARK, ROBERT E., was thereupon called as a witness herein, and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

Q. . . . What is your position with the Capitol, please?

A. I am an assistant treasurer.

Q. And you were here this morning when you were asked to obtain the amount of the personal property tax paid by the Capitol in (878) 1952 on its Lansing personal property?

A. Yes, sir.

Q. And do you have that figure?

A. Yes, sir.

Q. And what is it, sir?

A. \$477.89.

ANDREWS, HAROLD M., was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

Q. . . . You are connected with the Union Savings & Loan Association, Mr. Andrews?

A. Yes, sir.

Q. Now, would you speak up so the court and the stenographers can hear you, please?

A. Yes, sir.

Q. What is your position at the present time with the Union (879) Savings & Loan Association?

A. I am president.

Q. And how long have you been president, sir?

A. Since 1956.

Q. And what was your position before that, sir?

A. Executive vice-president and manager.

Q. How long did you have that position?

A. Since 1948.

Q. And were you with the Association prior to that time?

A. I joined the Association in 1921.

Q. And in your position from 1948 on, what were your basic duties?

A. Managing officer of the Association.

Q. And were you responsible primarily for the ultimate correctness, or for the books and records of the corporation?

A. To a certain extent, yes.

Q. The person who had immediate charge reported to you in that connection?

A. That is right.

Q. And subject to the Board of Directors, did you have anything to do with the formulation of policy from 1948 on?

A. I worked with the Board of Directors in formulating the policy.

Q. And then as general manager, and then later as president, you carried out those policies?

(880) A. That is right.

Q. Now, what is the area of the operation of the Union Savings & Loan?

A. As far as lending is concerned?

Q. Both; first lending.

A. Lending, we make loans in Ingham County, Clinton and Eaton; we are right in the corner of Ingham County, and we go up in the outlying area taking part of Clinton and Eaton counties.

Q. What is the area of your operations in respect to getting investment shares?

A. We have investment shares from all over.

Q. From all over the United States?

A. Yes, sir; we have had investors with us forty or fifty years.

Q. And they reside all over the United States?

A. Some of them, yes, sir.

Q. And is there any particular economic class you appeal to for getting your investors?

A. No; we advertise in the State Journal, and that goes to all people in the area; so we appeal through the newspapers.

Q. And in those advertisements, in 1952, did you mention anything about your dividend rates?

A. Not to my knowledge.

Q. Did you prior to that time?

A. Oh, we might have back in the early years when we were paying (881) five per cent, back before the depression, and we have recently again.

Q. What dividends did you pay in 1952?

A. Three per cent.

Q. What do you pay now—this is a separate record.

A. Pardon me. We paid three per cent until July of 1952, and in December, 1952, our Board voted to pay an extra half; or, we paid three and one-half, or one and three-quarters, for the last six months of 1952, and we continued that since then.

Q. Your rate was increased in the latter part of 1952 to a three and a half per cent annual rate?

A. That is right.

Q. And does the rate of dividends you paid shareholders depend upon the earnings of your corporation?

A. To some extent; to some extent. We have a very large surplus, reserve and undivided profits, and we are earning money on that money that we are not paying anything on.

Q. What dividend rates did you pay prior to 1952, say from 1945 on?

A. Well, we never paid less than three per cent at any time.

Q. At any time?

A. No, sir.

Q. And was it necessary for a person to be a member of your Association in 1952 prior to his becoming an investor in shares?

(882) Did he have to be a member before he came to you to become an investor?

A. The investor, no, he became a member at the time he made his investment.

Q. And did he get any vote when he became a member?

A. Yes.

Q. How many votes did he get for his investment?

A. He got one for each \$100, not to exceed twenty votes.

Q. Was there any ceiling in 1952 on the amount of investment you would permit a person to make?

A. Yes, sir.

Q. What was the ceiling?

A. Well, I cannot exactly tell you, but if you will just let me refer to my statement of 1952—

Q. (Interposing): You do that, sir?

A. In our December public statement that we made out to all our investors at the end of December, 1952, we say, "Your Board of Directors voted an extra dividend of a half of one per cent,"—which I have already mentioned—"and the Board of Directors has now released restrictions on investments so far as our shareholders are concerned."

That is, in other words, we were taking the money then from our existing shareholders rather than trying to go out and get new members, new money in. Prior to that time we were restricting our investors.

(883) Q. Then in 1952 you put the restriction off?

A. That is right.

Q. And you also got new members at that time, too, didn't you?

A. Oh, some, yes.

Q. And there were no restrictions on the new members?

A. Oh, yes, we won't take any hundred thousand dollars or anything like that. Somebody comes in with twenty, twenty-five thousand dollars, I want to know who they are and how long we can leave it there.

Q. You are interested in long-term investment?

A. That is right.

Q. And did you have any corporate investor?

A. Oh, we might have had one or two.

Q. And any trustees?

A. Just some small amounts through the trust company where most of that money had been invested in our association when the person deceased, and according to the terms of the will the trust company was named administrator and they left the funds with us.

Q. They continued as trustee?

A. That is right.

Q. And they continued their investment?

A. That is right.

Q. And did you have any partnerships?

A. Not that I know of.

(884) Q. Any educational institutions?

A. At one time we had about \$6,500 from the School District of the City of Holland, and not being an insured association, they changed the law, and they withdrew their money. Whether that was '52, I couldn't answer.

Q. And you say you had investors from all over the United States?

A. Yes, sir.

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Q. Were the investors from outside of Ingham County, did they become borrowers on mortgage loans from your institution?

A. Not if they were outside Ingham County, they couldn't. We were just loaning that area.

Q. And did many of your investors in number or dollar-wise become mortgage borrowers from your association?

A. Some of them did, yes.

Q. Were there any?

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(885) A. There were some investors, yes, that became borrowers. Percentage-wise I couldn't tell you.

Q. Isn't the percentage small, sir?

A. Well, yes, I would say.

Q. Now, was it necessary for a borrower, a mortgage borrower to be a member prior to his taking the mortgage?

A. No.

Q. And was it necessary for a borrower to be an investor?

A. No.

Q. And was it necessary for an investor to be a borrower?

A. Not necessarily.

Q. And is your association interested in increasing its investor shares, number of investors and the dollars invested with you?

A. We haven't been too anxious to grow. We haven't gone out and advertised too strongly.

Q. But you have grown, haven't you?

A. We have grown. A normal growth, I would say.

Q. How much have you grown from the period of 1948 to 1952, would you say percentage-wise?

A. In 1956 we took over the Lansing Savings and Loan with assets of about two million dollars. Our assets at the end of '48 (886) or '52 were around five million, as I recall it.

Q. I am talking about between '48 and '52 now.

A. I thought this was '52.

Q. I am starting in '48 and going to '52. Do you know how much you grew in deposits during that period?

A. Yes.

Q. Very good, sir.

A. You want to remember, as I stated before, that the period from '48 to '52 our investments were restricted. At the end of December 1948 our share liability was around four million dollars. Now you want what it was in '52?

Q. Yes, sir.

A. In '52 they were about four million three hundred thousand.

Q. And what have they been since that time?

Mr. Dexter: You Honor, I object to that.

Mr. Klein: Separate record.

The Court: Separate record.

A. You mean up to—

Q. As of the present time.

A. They were around 8 million dollars, I think.

Q. What rights did a person who was a borrower have as a member when he became a member at the time of borrowing?

A. He had voting power of one share.

Q. And did he have any other rights or obligations in respect to his share?

(887) A. No.

Q. He didn't have to pay for that share, did he?

A. No, sir.

Q. And when his loan was paid up, did his membership cease?

A. If he had no other investment. You are talking about the borrower share?

Q. Yes.

A. Yes, it did.

Q. It ceased. When a person came to make a mortgage loan, you have an application form for him, do you not?

A. Yes, sir.

Q. And do you also make an appraisal of the property?

A. Yes, sir.

Q. And does the form require financial statements as to his income and net worth?

A. On the back of the application there is a form.

Q. And on what basis did you base your mortgage loans in 1952?

A. On the appraised value of the property and the man's ability to pay.

Q. And what ratio of mortgage would you make to appraised value?

A. Practically two-thirds.

Q. What types of mortgages did you make in '52?

A. Conventional loans mostly.

Q. And what rate of interest did you charge in 1952?

(S88) A. Majority were 5% usually; probably had a very, very small percentage of 6%,

Q. And did you take FHA loans?

A. No.

Q. Did you take veterans' loans?

A. Yes, we made a few in 1952.

Q. And did you know in 1952 that the FHA loans were for a longer duration than most conventional loans?

A. I never made any FHA loans of any shape or manner, and I have only the information that I would get from the outside.

(889) Q. Being in the mortgage business, did you familiarize yourself with the terms of FHA mortgage loans in 1952?

A. May I answer that and take a little time?

Q. Certainly. Take as long as you like, sir.

A. In 1950, I think it was, a gentleman called on me from Cleveland representing the FHA, and he said we hadn't qualified with the FHA. He said he would send me some information.

About six months later he came back and I asked the same question, why we hadn't received it. He promised to send me some information.

Two years ago a man came in from Grand Rapids and asked me the same question. Up until now, I have never received anything from the FHA, so as far as the FHA is concerned, I am not interested. I never have been. I might be interested at some future date, but I am not now.

Q. Do you know the interest rates that were being paid on FHA loans in 1952?

A. Only by hearsay, what I have heard here.

Q. Being in business, weren't you interested in knowing what the Government had made possible for mortgage borrowers in 1952?

A. I was interested in what they were making possible for the borrowers, but also was interested in making loans to our own borrowers.

Q. Did you find out at what rate the FHA mortgages could be made in '52 because of your interest in home building?

(890) A. I was interested.

Q. Well, did you find out what the rates were, sir?

A. I don't know what the rate was. It might have been four-and-a-quarter plus a half, or four-and-a-half plus a half. I don't recall what it was in '52.

Q. What was the rate on G.I. loans in 1952?

A. Four per cent.

Q. And what was the term of mortgage?

A. Well, they would vary.

Q. In G. I. I am talking about.

A. Yes. We made them on our own form and we varied the term of the loan to the ability of the borrower to pay.

Q. What was it as a rule—twenty years?

A. Oh, no. Around twelve to fifteen years.

Q. Even on G.I. loans?

A. Yes.

Q. They were permitted up to twenty-five years; you knew that, didn't you?

A. It could have been, yes.

Q. But you didn't make any long-term G.I. loans?

A. I wasn't interested in long-term loans at the time.

Q. What was the average term of your loan, sir, in 1952?

A. Oh, I would say about thirteen years.

Q. About thirteen years?

A. Most of them were made on an eleven-year basis and some were (891) made on a fifteen or eighteen year basis.

Q. You say most were made on an eleven-year basis and some at higher?

A. That's right.

Q. And the purpose of your loans, were there some for construction purposes?

A. Yes.

Q. Some for buying existing homes?

A. That's right.

Q. And then there were some for other purposes, weren't there?

A. That's right.

Q. And what were these other purposes?

A. Well, I don't know. I think in the early part of 1952, if I recall it right, there were some regulations that restricted our lending. I think Regulation X or one of those regulations were in effect at that time. We had to go at a put per cent and they had to stay at a put per cent.

When that was released, I couldn't tell you, but if a man had the property and he wanted to borrow some money, we didn't care what the purpose was as long as we were complying with the regulations, because there was very few made on that basis.

Q. Were the other purposes for financing an automobile?

A. I doubt if there were very many made.

Q. But there were some?

(892) A. There could have been. I don't know.

Q. And for other household expenses or other expenses of the borrower other than building a house?

Mr. Dexter: Your Honor, I believe the witness says that he doesn't know.

A. Mr. Klein, let me answer this question. You talk about loans for all other purposes. Now, we made 291 loans during the year 1952, and there were only 33 out of that 291, for a total of \$67,000, that were made for other purposes.

Now, I would say that was a very small percentage, when our total lending was a million 600 thousand.

Q. (By Mr. Klein): Did you make any commercial loans at all in 1952? On commercial properties, I mean.

A. Not that I know of.

Q. Do you know what the average size of your loan was that you made in '52?

A. I know we made 291 loans for a total of a million 622 thousand. Divide that out and figure it out.

Q. Do you know—

A. (Interposing): I haven't done it, no. I don't think I have.

Q. We can get it.

What other institutions were loaning money secured by mortgages on homes in the Lansing area in 1952?

A. Well, the banks, the Michigan National, the American State, the Bank of Lansing, Metropolitan, Prudential and Equitable (893) would be the main lenders, I would say.

Q. Were they making loans secured by the same type of property as you were making loans on?

A. Yes.

Q. In the same area?

A. I would say so.

Q. Did your institution refinance any loans that the Michigan National Bank had in 1952?

A. I would say for the record that we probably took one loan from the Michigan National as against fifteen they took from us during 1952.

Q. So there was some refinancing of property both ways?

A. That's right, but mostly on their part.

Q. Do you know whether or not your Association paid any personal property taxes in 1952?

A. Yes.

Q. Do you have the amount that was paid, sir?

A. (Documents handed to Mr. Klein by the witness.) You are talking about personal property?

Q. Personal property. According to this, you paid tax on an assessed valuation of \$1,900?

A. That's right.

- Q. What was that on?
- A. On our furniture and fixtures.
- Q. And the total tax, then, amounted to approximately \$72.87?
- (894) A. Whatever the total of those two.
- Q. That is the total, sir. Is that correct?
- A. That's what we paid right here.
- Q. Yes, and did your Association pay an intangibles tax?
- A. Yes, sir.
- Q. At what rate?
- A. The rate required by law.
- Q. That is 40 cents a thousand on your shares?
- A. That is right.
- Q. And did you pay an annual privilege tax to the Secretary of State in 1952?
- A. Yes, on the same—
- Q. (Interposing): At what rate?
- A. At the rate required by law.
- Q. Well, was that a quarter of a mill?
- A. Whatever it was in 1952; I would say it was; I don't know.
- Q. That is what the Secretary of State has testified to?
- A. Well, the Secretary of State is the one that collects it.
- Q. Right. And you also paid a real estate ad valorem tax on your real estate?
- A. Yes, sir.
- Q. Now, did you bring with you, Mr. Andrews, pursuant to subpoena, a form of certificate showing the ownership in shares in 1952?
- A. Mr. Klein, as I mentioned before—
- (895) Q. Yes.

A. —in 1956 we took over the Lansing Savings and Loan, and we changed our name from the Union Building & Loan Association, Limited, to the Union Savings & Loan.

Q. Yes.

A. And for that reason we destroyed all our old certificates, and had to get new ones on the form on the new name. I have gone through our files and have picked three certificates of the various types that we issued in 1952.

Q. Very good, sir.

A. But for our records, we would like those back because those were taken out of our file; we had no blank ones.

Q. Would you object to the stenographer photographing them and mailing them to you directly?

A. I would be glad to.

Q. . . . I show you Exhibits which have been marked Exhibits 94-A, B and C, and ask you if they are the form of certificates evidencing ownership of shares of the three types of shares issued by your Association in 1952?

A. Yes, sir.

(896) Q. One, I see, is for installment savings?

A. That is right.

Q. That is 94-C; 94-B is what?

A. That is fully-paid.

Q. And 94-A is what?

A. Advanced-paid.

Q. What do you mean by "advanced-paid"?

A. They pay eighty and leave the dividends accumulate until there was a hundred. In this case there was a hundred, and when that matures to one hundred and twenty-five—

Q. And the 94-B is fully-paid?

A. Pay the cash dividends on it.

Q. And the 94-C is a payment on installments?

A. Weekly.

Q. Is that optional, the 94-C, they can pay or not?

A. No, that is installment savers.

Q. They are committed to pay.

Mr. Klein: I would like to offer Exhibits 94-A, B and C in evidence.

Mr. Dexter: No objection, except the continuing one of materiality.

The Court: Received.

Q. Do you have with you the Articles of Association and By-laws that were in effect in 1952, sir?

A. I have the original Articles, Mr. Klein, and, of course, (897) there have been a lot of amendments and changes.

Q. The ones that were in effect in 1952 I am talking about?

A. Well, we re-incorporated twice since this, but those are the original Articles.

Q. There are the original, but do you have the present ones?

A. The present ones?

Q. The ones that are in effect—

A. (Interposing): The ones that are in effect now are entirely new, because we changed them in 1957; 1956 would be the ones that we re-incorporated, probably, in 1946, with the amendments thereto.

Q. Do you have that?

A. I don't have them with me, no.

(898) Q. * * * Do you have with you a form of application for loan that was used by your Association in 1952?

A. Well, there (indicating) is one. I am sure I have a blank one (handing document to Mr. Klein).

Q. That is all right.

A. That I brought along on account of having a regulation in there that apparently was in effect in 1952. It might have some bearing.

Q. Well, this is one separate right here (indicating), isn't it?

A. That is right, that is it right there (indicating).

* * *
(899) Q. * * * You have handed me a document, which is a blank document, which has now been marked Exhibit 96, and I ask you whether or not that is the form of application for real estate loan used by your Association in 1952?

A. Yes, sir.

Q. On the reverse side there is a space for the financial statement and income of the prospective borrower?

A. That is right.

Mr. Klein: I would like to offer Exhibit 96 in evidence.

Mr. Dexter: No objection, except the continuing one as to materiality.

The Court: Received.

Q. (By Mr. Klein, continuing) I will show you a photostatic copy of an exhibit that has been marked 36-D, which has the heading "Building and Loan Division, Monthly Report, Union Building and Loan Association, December 31, 1952."

A. Yes, one of our reports, I am sure.

Q. I will ask you if that is a report which you filed with the Secretary of State of the State of Michigan?

A. Yes, sir.

(900) Q. And was that report prepared in the regular course of business, and was it pursuant to the regular course of business that it was prepared and filed with the Secretary of State?

A. Yes, sir.

Q. And do the figures in there correctly reflect the figures from the books and records of your Association for that period?

A. To the best of my knowledge and belief, yes, sir.

Q. I will show you Exhibit 37-K, and 37-K-1, and ask you if that signature appearing on each one of those exhibits is your signature?

A. Yes, sir.

Q. In one case it is signed as President, and in 37-K-1 as Vice-President, is that correct, sir?

A. That (indicating) is Mr. Anderson's.

Q. You are signing as secretary and treasurer?

A. No, sir, as vice-president; he just scrolled through there.

Q. Vice-president in both cases?

A. That is right.

Q. And you swore to those reports, did you?

A. That is right.

Q. And are they photostatic copies of the reports filed by your Association, the annual reports filed with the Secretary (901) of State for the respective periods of June 30, 1952, and June 30, 1953, respectively?

A. As far as I know, they are; they have our signatures.

Q. And do they correctly reflect the records of your corporation as at the period in question?

A. Yes, sir.

Q. And were they made up and prepared and filed in the regular course of business of your Association?

A. Yes, sir.

Q. And they were required by law to be filed, were they not?

A. That is right.

Cross Examination

By Mr. Dexter:

Q. You were asked some questions, Mr. Andrews, in regard to the number of investor members that were also borrower members, but you have no specific knowledge of that as to 1952, have you?

A. No, I haven't.

(902) Q. I think you also testified in the separate record for the period subsequent to 1952 that your assets were currently 8 million dollars. Was that a result of any merger that took place between—

A. (Interposing): Part of it was. You are talking about our assets as of now?

Q. Yes, as of now or as of the period that you testified as in reference to the 8 million dollar figure. That was the current figure.

A. The 8 million dollar share liability, that included the merger figure of the Lansing Savings & Loan.

Q. So that the predecessor association did not grow from 4 million 300 thousand in '52 to 8 million currently?

A. No.

Q. That would include the assets of the merger?

A. The assets of the Lansing were just a little under 2 million when I took over.

Q. That 8 million dollars, then, is the two associations after their merger?

Mr. Klein: You say they had a share liability of 2 million dollars?

A. No, I said their total. They had a share liability of probably a million and a half, something like that.

Mr. Klein: And the aggregate now is 8 million?

A: That is right.

(903) Q. Do you know whether or not your so-called other purpose loans included refinancing?

A. Refinancing of loans?

Q. Yes, would you put that under other purpose?

A. I think we might have had some in there. Just a minute, I will look at our schedule here. We take this off of our monthly statement reports. Financing of homes—

Q. (Interposing): I mean refinancing your own loans.

A. Part of that is in there.

Q. Do you know how much of that would be of that character?

A. No. There isn't very much to it. The total of the loans for all other purposes were only 67 thousand 200, for all other purposes, 33 of them, so they are small amounts.

Q. Do you have any priority for purposes for which you loan money?

A. What do you mean, Mr. Dexter?

Q. I mean would you loan money for home loan purposes over any other type of loan, thinking in terms of these other purpose loans?

Q. You mean if someone came in who wanted to borrow some money for other than to purchase a home or build a home?

Q. Somebody at the same time wanted some money to buy or build a home, is there any system of priority in your association in regard to what you will loan money for?

A. We like to make construction loans.

Q. That is home mortgages?

(904) A. Home mortgages, yes.

Q. You would prefer that kind of loan?

A. Oh, yes.

Q. Do you count as a new loan money you get on refinancing a current mortgage loan that you have? Is that considered a new loan?

A. No.

Q. As I understand it, you have been in the association since 1921; is that true?

A. Yes, sir.

Q. That is the present association or its corporate predecessors?

A. Yes, sir.

Q. To your knowledge has the character of that institution changed any from that time on down to 1952?

A. Not to any great extent, no.

Q. And the things that your association does are those authorized by law and by the association by-laws and articles of incorporation?

A. That is right.

Q. You engage in no other activity but the mortgage business of what you have testified; is that true?

A. That is right. In other words, we have no safe deposit box or money orders or things of that nature. We just have investment shares and make our mortgage loans. We do not go into any other field.

(905) Q. And this is spelled out in your by-laws, is it not, what you do?

A. Yes.

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Re-direct Examination

By ~~Mr.~~ Klein:

Q. When you made loans for other purposes, you still took mortgages on homes, didn't you, to secure your loan?

A. We had to. That is the only way we could make them according to law.

Q. That is your business, to make mortgages secured by real estate?

A. That is right. We could only make two types of loans, either on our shares or on a first mortgage. That is all you could do.

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Mr. Klein: Your, Honor, at this time I should like to offer as Exhibit 97 the certified copy of the articles of association and the by-laws of the Saginaw Building and Loan Association from January 17, 1888 down to the date certified, June 6, 1958.

These are certified by the office of the Department (960) of State. We thought it would be interesting to have a complete set of such articles and by-laws with all amendments in the record to show the changes that have been made in associations of this kind.

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The Court: . . . It is received conditionally. Unless there is some objection later on, it is understood it is received.

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(908) FAIRLES, RUSSELL, was thereupon called as a witness on behalf of the plaintiff, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Klein:

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Q. Are you connected with the Michigan National Bank, the plaintiff in this case?

A. I am.

Q. And what is your position with the Michigan National Bank?

A. Vice president.

(908½) Q. And what are your responsibilities in that connection, sir?

A. Responsible for general operations.

(909) Q. Are you in any wise responsible for the accounting reports and records of the bank?

A. Yes, sir.

Q. And does that include only the administrative office, or does that include the seven offices?

A. Seven offices.

Q. And where does the Michigan National Bank have offices, sir?

A. Battle Creek, Flint, Grand Rapids, Lansing, Marshall, Port Huron and Saginaw.

Q. And how long have you been connected with the Michigan National Bank, sir?

A. Since it became Michigan National Bank.

Q. And when was that, sir?

A. January 1, 1941.

Q. Were you connected with any banks before that?

A. Yes, sir.

Q. What banks were you connected with, sir?

A. Immediately prior to that, the First National Bank and Trust Company of Grand Rapids.

Q. And then before that, sir?

A. The National Bank of Grand Rapids.

Q. And then before that, sir?

A. The Grand Rapids National Bank.

Q. And then?

A. The Bank of Detroit.

(910) Q. So you have been in the banking business a long time?

A. Since 1920.

Q. Do you attend Board of Directors' meetings of the Michigan National Bank?

A. I do.

Q. And how long have you attended those meetings?

A. Since about 1948.

Q. Are you on the Executive Committee of the Michigan National Bank?

A. I am.

Q. And are there other operating officers on that committee?

A. There are.

Mr. Klein: Mr. Van Coevering, do you have with you copies of the Michigan Department of Revenue intangibles Tax Return of the Michigan National Bank? There were two of them, I believe, one before the law was amended and one after, and if you have, I wonder if the Court would ask Mr. Van Coevering to produce them. I think he feels there should be a direction of production.

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(911) The Court: * * * The Department will produce the records.

* * *

(912) Mr. Klein: * * * I have had this folder marked Exhibit 1. It contains the initial return of the Michigan National Bank under the law before it was amended—that is, for 1952—and it bears the stamp mark of May 28, 1953, I believe.

Then there is a departmental form showing payment by the bank.

Then there is a letter dated May 20, 1953 from the Department of Revenue, Louis M. Nims, Commissioner, to the Michigan National Bank, increasing the assessment for intangibles tax pursuant to the amended statute, showing a then deficiency of \$49,929.27. The figures will speak for themselves, of course.

Then there is a ledger sheet of the Department of Revenue, showing that amount of tax claimed to be due.

There is a letter from Clarence W. Lock, Deputy Commissioner, to the Michigan National Bank, of a hearing on the proposed assessment and the determination by him of the additional assessment.

Then there is a letter from the Michigan National Bank, dated November 10, 1953, to the Department of Revenue, making the payment under protest, and the ~~next~~ sheet is from the Department of Revenue, showing receipt of payment, and a new return on the basis of the new law, all of which was made under protest, showing the additional tax as assessed, and then the receipt by the Department of Revenue of the deficiency.

I would like to offer this all as Exhibit 1.

* * *

Mr. Dexter: No objection.

The Court: Received.

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Q. (By Mr. Klein): Mr. Fairles, did the Michigan National Bank make a report to the Controller of the Currency of the Federal Government for the period of December 31, 1952?

A. They did.

Q. The Michigan National Bank, I take it, is a national banking association?

A. It is.

Q. And it was incorporated under the national banking laws?

A. It was.

(914) Q. And operates under the national banking laws?

A. It does.

Q. Do you have a copy of the report which you prepared for the Controller of Currency for the period ended December 31, 1952?

A. I have.

Q. And was that report made in the regular course of the bank's business and was it the regular part of business to make such reports and file the same with the Controller of Currency?

A. It was.

Q. Was it required so to do by statute?

A. It is.

Q. And do the figures contained in that report, or the copy which you hold, truly and correctly reflect the condition of the bank as set forth in that report?

A. They do.

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(915) Mr. Klein: I should like to offer Exhibit 3, which is a report of condition of the Michigan National Bank at the close of business December 31, 1952, to the Controller of Currency of the Treasury Department, on Form No. 2130-A, Call No. 404.

Mr. Dexter: I object to it, your Honor, as not the best evidence.

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(916) The Court: So that will be my present ruling. You will have a chance later to show me I am wrong, if counsel, before he gets through, indicates that he wants us to make it, but at the same time they may be received conditionally at this time, subject to the further rights on the part of the (917) State.

Q. (By Mr. Klein): * * * Referring to Exhibit 3, Mr. Fairles, I see on the reverse side of the report, that is, the back page, a Schedule A, under the heading of "Loans and Discounts." Is that correct, sir?

A. Yes, sir.

Q. And under Item 6 of Schedule A, there are tabulated various types of real estate loans, is that correct?

A. That is correct.

Q. And that includes farm loans, residential loans other than farms; then there is a breakdown of FHA, VA and not insured or guaranteed by FHA or VA, and then there is real estate loans secured by other preproperties.

What is the aggregate of that Item 6, as I have related it?

A. The aggregate totals about \$62,000,000.

Q. And what were your total loans of all kinds, including those mortgage loans, as at December 31, 1952?

A. \$148,304,000.

Q. And that is before reserve for bad debts, and so forth?

A. Yes, sir.

Q. What percentage then was the real estate loans of all kinds to your total loans and discounts as at December 31, 1952?

A. Forty-two per cent.

(918) Q. And of the loans made on residential properties, what was the aggregate of those loans outstanding as at December 31, 1952?

A. Eighty-three per cent.

Q. Or, how much in dollars—that is eighty-three per cent of what?

A. Eighty-three per cent of the mortgage loans were residential, secured by residences; and they totaled \$51,419,000.

Q. That is loans secured by mortgages on residential properties?

A. That is right.

Q. And what per cent of the total loans and discounts were your mortgage loans secured by residential properties?

A. 40 per cent.

Q. Now, I see in Schedule A, under Item 7-C, a classification of Repair and Modernization Installment Loans, of some \$8,317,000, and ask you the nature of that item?

A. They are loans that are not secured; they represent improvements to property.

Q. Real estate, on residences, or otherwise?

A. That is right.

Q. On residences?

A. Mostly residences.

Q. Mostly residences. So if you are to add that \$8,300,000 to the other mortgage loans on residences, that would give you a total of about \$59,736,000 of

mortgage loans, plus modernization and repair loans, for residential properties?

(919) A. Yes, sir.

Q. And that is what per cent of your total outstanding loans and discounts as at 12/31/52?

A. 40 per cent.

Q. Well, now, you said something about a forty per cent figure before. Was that with or without that eight million?

A. It is without the eight million, it is thirty-five per cent.

Q. I see, and with the eight million modernization loan, it becomes 40 per cent of the total loans and discounts outstanding as of 12/31/52?

A. Yes, sir.

Mr. Dexter: I believe, your Honor, that these figures can more or less speak for themselves, and that the witness has already testified that this repair and modernization installment loans is not all residential. Now, if it is to be reliable, certainly that figure has got to be broken down.

Mr. Klein: * * * Was that residential primarily or not?

A. Primarily residential.

Q. What percentage would you say?

A. I would say about ninety-eight per cent.

Q. About ninety-eight percent of that eight million is for repair and modernization of residences?

A. Yes, sir.

(920) Q. Would you say that that amount of mortgage loan and modernization loans at that period in 1952 constituted a substantial part of your business?

A. Yes, sir.

Q. Well, looking on the front side of Exhibit 3, I see you indicate total assets of some \$305,800,000 for that period, is that correct, sir?

A. Yes, sir.

Q. Now, the other assets appear to be primarily cash of \$46,000,000, in round figures, and \$107,000,000 in Government bonds, is that correct?

A. Yes, sir.

Q. And the rest is bank premises owned, and fixtures, and an item of "Other assets"?

A. Yes, sir.

Q. So what is the primary business of the bank?

.

(921) A. Receive deposits and make loans.

Q. . . . And in 1952 did you endeavor to increase the deposits of the bank?

A. We did.

Q. And did you or did you not endeavor to make as many good loans as you could, in 1952?

A. We did.

Q. In 1952 had you exhausted all available funds of the bank for mortgage loan purposes?

A. No, sir.

Q. Did you have substantial resources available for additional mortgage loans in 1952?

A. We did.

.

(922) Q. Referring to Schedule A on the reverse side of Exhibit 3, I see under item 6-B a classification, "Federal Housing Administration Loans," \$26,944,797.52.

Under 6-B2 "Veteran's Administration Loans" of \$9,289,591.61.

And item 3, "Not insured or guaranteed by FHA or VA"—would that be your regular loan?

A. Conventional.

Q. \$10,209,699.79. That is correct, isn't it?

A. That is right.

Q. Now, does that represent the unpaid principal balance as at that date?

A. It does.

Q. Of each class of loan?

A. Yes, sir.

Q. Now, I will show you a volume which has been marked—

I misspoke myself when I said 10 million. Would you strike that figure, please. It is \$15,185,470.71 conventional mortgages. I had previously said 10 million. I read the wrong figure on residential conventional mortgages.

A. Apparently I must have been looking at the one you pointed at.

Q. And I read the wrong one. Now, I will show you an exhibit which has been marked Exhibit 4-A and ask you what that is.

A. This is a comparative statement of condition of the Michigan (923) National Bank showing—

Q. (Interposing): As of what date?

A. Showing assets and liabilities as of December 31, 1952, as compared with December 31, 1951.

Q. And what are—

A. (Interposing): The same type of information for the Battle Creek office and each of the other offices in Flint, Grand Rapids, Marshall, Port Huron and Saginaw.

Q. For the same period?

A. For the same period.

Q. And were these figures and these statements prepared in the regular course of business?

A. They were.

Q. Did they come to your office as part of the regular course of business?

A. They did.

Q. And where did they go from there in the regular course of business?

A. As a report to the Board of Directors at their regular meeting the second Friday of each month. This one would be the second Friday in January.

Q. Following the year end—

A. Of 1953.

Q. And do you have the regular bound volume of reports submitted to the Board of Directors from which these were copied?

(924). A. I do.

Q. And are they here in court?

A. They are.

Q. And are they available for Mr. Dexter's examination?

A. They are.

Q. Are these reports made on a monthly or any other type of basis?

A. Monthly.

Mr. Klein: I should like to offer Exhibit 4-A, consisting of 8 separate statements as described by Mr. Fairles, and the originals are here for comparison by Mr. Dexter.

Mr. Dexter: Same objection, your Honor, as to Exhibit No. 3.

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(930) The Court: My own ruling will be that the counsel have the right to have the books marked, the right to examine them, the right to cross-examine him.

They may be received tentatively or conditionally here for the purpose of examining the witness, if you wish, but they are all subject to the condition if counsel wishes the books produced, they will have to be produced. That is my present ruling, and they have a right to examine them.

.

Q. (By Mr. Klein): I will show you Exhibit 4-B and ask you what it is?

A. It is the consolidated activity report showing the number of borrowers, the number of depositors, the number of safe deposit boxes rented, vacant and delinquent, the number of officers and employees for the year December 31, 1952. This is as of (931) the close of business December 31, 1952, as compared with the close of business December 31, 1951.

Q. And attached to that is what, sir?

A. The same information for each of the individual offices in Battle Creek, Flint, Grand Rapids, Lansing, Marshall, Port Huron and Saginaw.

Q. And is Exhibit 4-B a photostatic copy of a report sent to you and in turn submitted to the regular meeting of the board of directors?

A. It is.

Q. Is that prepared each and every month?

A. It is.

Q. Is it prepared in the regular course of business?

A. It is.

Q. And is it the regular course of business to prepare and submit such reports to the Board of Directors for their consideration?

A. It is.

Q. And it is submitted to them how long after the end of each month?

A. At the Board of Directors meeting the second Friday of each and every month.

Q. And this activity report dated 12-31-52 covers what period?

A. It is as of that date.

Q. As of that date. And do you have the original report as made to the directors here in the courtroom for examination by Mr. (932) Dexter?

A. I do.

Mr. Klein: I should like to offer Exhibit 4-B in evidence, sir (handing exhibit to Mr. Dexter).

Mr. Dexter: Same objection, your Honor, as to 4-A.

The Court: Same ruling.

(933) Q. I will show you, Mr. Fairles, Exhibit 4-C, and ask you what that is?

A. 4-C is a consolidated report of loans made and paid for the month of December, 1952, showing the balance at the start of the period, the new loans made during the month.

Q. Of December?

A. Of December, 1952; the principal payments for December, 1952, and the outstanding unpaid balance as of December 31, 1952; and also the year to-date figures, showing the starting outstanding balance for December 31, 1951, new loans made during 1952, principal payments made during 1952, and the balance as of the close of the period December 31, 1952, broken down as to general loans, FHA mortgages, GI mortgages, other mortgages, and installment loans.

Q. And there are similar reports for each of the offices of the bank for the same period.

A. There is.

Q. And were these reports prepared in the regular and ordinary course of the business of the bank?

A. They were.

Q. And was it the regular and ordinary course of the business of the bank and its officers to prepare these reports and submit them to the Board of Directors for their consideration?

A. It was.

Q. And was it done monthly, or when?

(934) A. Monthly.

Q. And how soon after the end of the period were these reports given to the Board?

A. The second Friday of the following month.

Q. And were they prepared from the books and records of the bank in the regular course of business?

A. They were.

Q. And do they correctly reflect—

A. They do.

Q. —the transactions there?

A. They do.

Mr. Klein: I would like to offer Exhibit 4-C in evidence.

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Mr. Dexter: Same objection as to Exhibit 4-C that we made as to 4-B and 4-A.

The Court: Same ruling.

(935) Q. * * * I will show you Exhibit 4-D, and ask you what it is?

A. It is the outstanding unpaid balance of GI mortgage loans as of December 31, 1952, showing the number of such loans, the outstanding balance as of that date, and the average balance of each loan broken down as to offices.

Q. And is this a copy of a report prepared in the regular and ordinary course of business?

A. It is.

(936) Q. Was it the regular course of business of the bank to have such reports prepared and filed with the Board of Directors for its consideration?

A. It was.

Q. Was it prepared monthly, bi-monthly, or quarterly, or how?

A. Monthly.

Q. And does it truly and correctly reflect the transactions or the balances as to the end of the period indicated?

A. It does.

Mr. Klein: I would like to offer Plaintiff's Exhibit 4-D in evidence.

Mr. Dexter: Same objection as to Exhibit 4-C.

The Court: Same ruling.

Q. . . . I will show you Exhibit 4-E, and ask you what that is, sir?

A. This is a consolidated report of installment loans, showing the outstanding balance as of December 31, 1952, as compared with December 31, 1951, broken down as to automobile collateral, FHA improvement loans, personal loans, trailer loans, dealer floor plan loans, and total, showing the number in each category, the outstanding balance in each category, the percentage to the total, and then a past due record of each of the categories, broken down as to 30 days past due, 60 days, 90 days or more, total past due, showing the number and the amount in each instance, the percentage delinquent, (937) percentage as to number, percentage as to amount.

Q. When you say "consolidated," that means the bank as a whole?

A. Yes, sir.

Q. And then attached to that are similar statements for each of the offices?

A. Yes, sir.

A. And were these reports prepared in the regular course of business of the bank?

A. Yes, sir.

Q. And was it the regular course of business of the bank and its officers to prepare such reports and to file them with the Board of Directors each month?

A. Yes, sir.

Q. And you have the originals of such reports as filed with the Board here in the courtroom?

A. I have.

Q. And pointing to an item in the third line of each of these tables marked "FHA," what does that mean?

A. They are FHA improvement loans outstanding and unpaid as of December 31, 1952, as compared with December 31, 1951.

Q. Is that the figure you discussed before for modernization and improvement?

A. Yes, \$8,317,000.

Q. And you testified, I believe, that about ninety-eight per (938) cent of that was for residential loans?

A. I did.

Mr. Klein: I should like to offer Exhibit 4-E in evidence, sir.

Mr. Dexter: Same objection, your Honor, as to 4-D.

.

The Court: I do not think we had a ruling on this. The ruling will be the same as on the preceding exhibits 4-A, B, C, and so forth.

Q. . . . I will show you some papers which have been marked Exhibit 5-A, and ask you what they are—Exhibits 5-A, B, C, D, E, F, and G; what are they, sir?

A. These are new mortgage loans made during 1952, broken down by offices, according to the types of loans, FHA, GI, conventional, showing the name of the mortgagor, the type of collateral, the (939) amount of the loan, the appraisal value, by months, commencing with January, 1952, and each month thereafter, to December, 1952.

Q. And each one is for each month at each office, is that correct?

A. That is correct.

Q. And were these reports of loans made during the month in question?

A. They are.

Q. And they were reports to whom?

A. The Board of Directors.

Q. And were these reports prepared by the officers of the bank in the regular course of business?

A. They are.

Q. And was it the regular course of business of the bank to prepare and file and submit such reports each and every month to the Board of Directors, showing those transactions which had occurred in the preceding month?

A. Yes, sir.

Q. Were the pencil marks on the left side, the margin there, on the reports as they were filed with the Board of Directors?

A. No, sir.

Q. Do you have the originals of these reports in the courtroom as they were filed with the Board of Directors?

A. Yes, sir.

Q. And you say they are broken down by types of mortgage and totals and appraisal amounts?

(940) A. Yes, sir.

Q. And are they to advise the directors of transactions on mortgages made during the preceding month?

A. Yes, sir.

Q. How soon after the month end period are they filed with the Board?

A. The second Friday.

Q. And on the left margin of each of these reports there are some pencil notations, are there not?

A. Yes, sir.

(941) Q. At whose direction were they placed there?

A. My direction.

Q. And what do those penciled numbers indicate?

A. They represent the page number and the line on which these particular mortgages appear on the schedule that we prepared covering recorded mortgages, which is Exhibit 65-A.

Q. Through F, I believe. In other words, the pencil mark will indicate the mortgage made as the reference appears in 65-A through F, the abstract of mortgages which has been offered into evidence here?

A. Yes, sir.

Q. Were they reports of loans which had been closed in the month in question?

A. Yes, sir.

Q. And were they reports of the moneys actually disbursed for such loans?

A. Yes, sir.

Q. Were they new loans or old mortgages to refinance other existing indebtedness?

A. Mostly new.

Q. Mostly new loans for new mortgages?

A. Right.

Q. Do they represent mortgages to secure past indebtedness of other character of the bank?

A. Might be two or three, very, very few.

(942) Q. And what was the purpose to be considered by these reports by the Board of Directors?

A. We report all loans, all new loans, to the Board of Directors every month.

Q. And in operating the bank are they discussed at the bank board meeting?

A. They are reviewed.

Mr. Klein: I should like to offer Exhibits 5-A through 5-G, inclusive.

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Mr. Dexter: I make the same objection, your Honor.

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(944) The Court: The same ruling.

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Q. . . . I will show you a paper which has been marked Exhibit 5-H and ask you what it is. Just describe what it is.

A. This is a recapitulation of real estate loans made in 1952, showing a breakdown between residential and commercial by (945) offices, showing the number under residential, the total amount of loans made, the average made by offices, and the same thing for commercial, and then a further breakdown in the same manner for FHA real estate mortgage loans made during 1952.

Same information for GI real estate mortgage loans made in 1952, and a breakdown for regular real estate mortgage loans made in 1952, as to residential in one section and commercial for another section.

Q. And at whose instance was this Exhibit 5-H prepared?

A. At Mr. Dexter's.

Q. Mr. Dexter wrote a letter to me and he wrote and asked you to prepare these tabulations for him?

A. Yes, sir.

Q. And at his instance we have had them prepared, have we not?

A. Yes, sir.

Q. And are they prepared from the books and records of the bank and the tables to which you have just referred in Exhibit 5?

A. Yes, sir.

Q. And do they clearly reflect the record?

A. They do.

Mr. Klein: I should like to offer Exhibit 5-H into evidence, which was prepared at Mr. Dexter's request.

Mr. Dexter: Same objection, your Honor.

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(946) The Court: Same ruling.

(A tabulation was marked Exhibit No. 98 by the reporter.)

Q. . . . I will show you a tabulation which has been marked Exhibit 98 and ask you what it is, sir.

A. This is a report covering the comparison of time deposits in the Michigan National Bank as compared with the shares in savings and loan associations as of the close of business December 31, 1952, broken down as to cities, Battle Creek, Flint, Grand Rapids, Lansing, Marshall, Port Huron and Saginaw, and showing the consolidated or combined figures.

Q. And were they prepared from exhibits in this case?

A. They were.

.

(947) Q. And is it correct to say that Exhibit 98 is a recap or summary based on figures appearing in Exhibits 4-A, 36, 45-F, 57-F, 61-F, 73-E, 77-D, 81-D, 87 and 92?

A. Yes, sir.

Mr. Klein: I should like to offer Exhibit 98 into evidence. . . .

Mr. Dexter: Object, your Honor, to it as not being the best evidence, and apparently it is a summation of evidence already admissible, with the exception of 4-A, and it has no evidentiary value whatsoever.

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(950) The Court: Let's proceed with this witness as far as today is concerned, and you may go ahead and examine this witness on the condition you eventually comply with the Court's ruling with respect to the admissibility of the Exhibits 4 and 5, and the letters under them.

Now, to come back to 98 again, where we left a moment ago, if 98 is based in part upon Exhibit 4-A, why, then it is not admissible under the Court's present ruling. I have no objection to it as a summary of other evidence. That may be very helpful on that, and if you want to mark it as an exhibit for that purpose, I have no objection to it being marked as an exhibit.

Technically, I think probably counsel is right. You can't make evidence out of it by marking it as an exhibit, but at any rate, I have no objection to summaries that are helpful to us here if they are based on something that is admitted in evidence. .

.

Q. . . . I will show you Exhibit 99 and ask you what this is, Mr. Fairles?

A. This is a report covering the comparison of real estate mortgage loans outstanding in the Michigan National Bank as compared with savings and loan associations as of the close of business December 31, 1952, and broken down as to the cities of Battle (951) Creek, Flint, Grand Rapids, Lansing, Marshall, Port Huron, Saginaw, with a combined picture of all offices, all cities.

Q. And is that predicated on exhibits already offered into evidence?

A. It is.

Mr. Klein: Some of those exhibits, sir, are—I think one of them is within the Exhibit 5 category. The others, I think, already have been admitted in evidence (handing exhibit to Mr. Dexter).

Mr. Dexter: The same objection as to Exhibit 98.

The Court: Same ruling.

Q. . . . On your conventional mortgages taken in 1952, what was the ratio of mortgage to appraised value?

A. I haven't figured out the ratio on conventional mortgages. I haven't got the computation on the ratio of conventional mortgages.

The Court: I don't think he understands your question. This is the ratio of the amount of the mortgage to (952) the appraised value; isn't that what you are asking?

Mr. Klein: Yes.

A. I understood the question. We have the ratio for FHA and I have it for GI, but I don't have it for conventional.

Q. (By Mr. Klein): Well, what are they for FHA? What were they in 1952?

A. In 1952, under FHA, for January, 1952, of all loans made, it was 73 per cent. The loan was 73 per cent, or the loans were 73 per cent of the total appraised value.

Q. How about the GI?

A. Well, that was in Battle Creek under FHA.

In Flint it was 71 per cent.

In Grand Rapids it was 72 per cent.

In Lansing, 78 per cent.

In Marshall, there just happened to be one. It was 57 per cent.

In Port Huron, 79 per cent.

And in Saginaw, 76 per cent.

That was in January. I didn't figure them for all of the other months.

Q. And how about the veterans' loans in '52?

A. Well, there didn't happen to be any in Battle Creek for January.

And in Flint, there was one. It was 80 per cent.

In Grand Rapids, there didn't happen to be any in January.

(953) The same in Lansing.

Same in Marshall.

In Port Huron, the average was 89 per cent.

We didn't happen to have any in January for Saginaw.

Q. Do you know the term or length of FHA mortgages that the bank made in 1952?

A. It would be around twenty years.

Q. And how about GI or Veterans' loans?

A. It would be about the same.

Q. And how about conventional or regular loans?

A. The majority of them would be ten years.

Q. And what was the interest rate to borrowers on FHA mortgages in 1952?

A. Four and a quarter per cent, plus the one half per cent service fee.

Q. Is that the insurance that we have been talking about?

A. One half per cent FHA insurance.

Q. Is that paid to the FHA, the one half per cent?

A. It is.

Q. And is there any possibility of refund on that to the borrower?

A. I understand there is a possibility.

Q. And Veterans Loans, what was the interest rate charged by the bank on those loans in 1952?

A. I think it was four per cent; I am not sure.

(954) Q. And on conventional or regular loans in 1952?

A. In 1952 I believe the rate would range from five to six.

Q. What were most of them at, so far as you know?

A. I believe most of them in 1952 would be perhaps five per cent.

Q. And do you know on what basis these loans were amortized, these mortgage loans?

A. On a monthly basis.

Q. Was that true of FHA?

A. It was.

Q. Conventional?

A. Yes, sir.

Q. And GI?

A. Yes, sir.

Q. Do you know what the average amount of the savings deposits were at the Michigan National Bank in 1952?

A. Yes, sir.

Q. What period are we talking about?

A. December 31, 1952.

Q. What was the average amount of savings? We are talking about (955) time savings deposits, aren't we?

A. Savings book deposits.

Q. Yes. What was that amount?

A. The bank as a whole, \$647.00 average.

Q. And do you have it broken down by offices?

A. Yes, sir.

Q. Do you have the amounts for each office?

A. I do. Battle Creek, \$574; Flint, \$627; Grand Rapids, \$798; Lansing, \$654; Marshall, \$891; Port Huron, \$684; Saginaw \$580.

Q. What was the interest rate paid by the bank on savings deposits in 1952?

A. Savings book deposits; we had two classes of accounts, we had time certificates of deposit and savings book deposits.

Q. Savings book deposits?

A. Savings book deposits in 1952, we paid one per cent per annum, except our Flint office, for competitive reasons, paid one and one-half per cent per annum.

Q. That was in 1952?

A. That was in 1952.

Q. What interest rate has been paid since 1952—and this is subject to the special record, I suppose, in view of your Honor's ruling.

A. All right. This is on savings book accounts?

Q. That is right.

(956) A. All right. 1953 it was one per cent per annum, except Flint, one and one-half, and as of December 1, 1953, the Saginaw office commenced paying one and one-half, from one per cent.

1954, one per cent per annum, with the exception of Flint, that paid one and one-half to November 30, 1954, then they increased it to two per cent effective December 1, 1954. The Saginaw office paid one and one-half per cent per annum.

1955, one per cent per annum to May 31, 1955, effective June 1, 1955, it was two per cent—some of these were paying quarterly and some semi-annually; I don't know whether you are interested in that or not.

1956, two per cent per annum to February 8th, 1956, except—there wasn't any exception there, it was just on the dates of payment—two and one-half per cent as of March 1, 1956.

In 1957, the Federal Reserve regulations were changed to permit the payment of three per cent as of January 1, 1957, which we commenced paying at that time, and we were on a uniform basis in all offices, and crediting the interest quarterly, January 1st, April 1st, July 1st and October 1st.

In 1958, we are on the same basis as 1957.

Q. Was that three per cent?

A. Three per cent, payable quarterly.

Q. And is the interest rate guaranteed to your time depositors or (957) not?

A. It is.

Q. In other words, the bank obligates itself contractually to pay the agreed interest rate?

A. Yes, sir.

Q. You are obliged to pay it whether you make money or not?

A. We are obliged to pay the rate that we obligate ourselves to pay the depositors.

Q. Right. What determines the amount of interest rate paid by your bank in 1952, and time prior and thereafter?

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Q. (By Mr. Klein, continuing): What factors do you consider, did the bank consider?

A. We considered competition for funds as the main reason for a change.

.

(958) Q. Do you know who your competitors are?

A. I do.

Q. For savings funds?

A. I do.

Q. And do you know who they were in 1952?

A. I do—I did.

Q. And who were they in 1952?

A. The other banks and the Savings and Loan Associations, and the U. S. Government, in the form of savings bonds.

Q. And did your bank endeavor to get more time deposits, and is it still endeavoring to do so?

A. We did, and we are.

Q. What factors did the bank consider in 1952 in setting its interest rates, and what factors does it presently consider—part of it is subject to the special record?

A. We consider the competition for funds and the fact that we could pay as high a rate as we could for time deposits and still make money by loaning the funds.

Q. Were you aware of the rates paid by the Savings and Loan Associations as dividends on savings shares in 1952?

A. We certainly are, and were.

Q. And was that a factor in the bank setting its rates of interest on time deposits in 1952?

(959) A. It certainly was, and is.

Q. Are those dividend rates, or were those dividend rates paid by the Savings and Loans in 1952 an important factor in that determination?

A. They were.

Mr. Dexter: Your Honor, I wish he would explain what he means by the word "important" to the witness.

Q. All right. Will you explain what you mean by the word "important," at Mr. Dexter's request?

A. We either pay the going rate for funds, or we do not get the funds, whether it is from a savings bond or from Savings and Loan Associations, or any other organization that is paying for money.

Q. And you get funds, savings funds from whom?

A. Anybody that has money.

Q. And savings connotes what?

A. Thrift.

Q. What do you mean by time deposits?

A. A deposit on which a notice is required.

Q. In other words, that is different than an ordinary commercial deposit?

A. Or demand deposit, yes.

Q. And does that generally connote long time keeping of funds as compared with the usual checking account deposit?

A. In order to pay three per cent on the money, it is required (960) to be on deposit six months.

Q. And is there any limitation as to the amount of mortgages you may make, based upon the amount of your time deposits?

A. There is.

Q. Was there in 1952?

A. There was.

Q. Had you exhausted that limitation in making your mortgage loans in 1952?

A. No, sir.

Q. However, it follows, I assume, that the more time deposits the bank has the larger amount available to be loaned on mortgage loans?

A. Yes, sir.

Q. Did mortgage loans in 1952 produce a higher rate of return than the ordinary commercial loan?

A. They did.

Q. And, as you testified, they represented about, I think you gave a figure of about 35 per cent of your total loans, and if you include the improvement installment loans, about 40 per cent, in 1952?

A. You are talking about residential?

Q. Yes.

A. Only excluding business and farm. 40 per cent of our total loans were residential loans and home improvement loans.

(961) Q. And if you excluded the home improvements, it amounted to about 35?

A. 35 per cent, right.

Q. Do you know the average amount of your mortgage loans in 1952, on residential property?

A. No, I don't. Let me see. Wait a minute. Yes, I do.

Q. What were they, sir?

A. Residential property—this is on the loans made in 1952?

Q. Made in 1952.

A. This is not on the ones outstanding in 1952?

Q. That is right.

A. All right. The average real estate mortgage loans, residential, for the bank as a whole in 1952 amounted to \$6,802.

(962) Q. . . . Do you know who the competitors were of the bank in 1952?

A. I do.

Q. For mortgage loans?

A. Yes, sir.

Q. Who were they?

Mr. Dexter: Your Honor, I wish Mr. Klein would define his terms.

Mr. Klein: I will define my term.

When two or more people are seeking some business, residential mortgage business, in the same locality and on the same type of security, I would say they are competitors. Each one of the Building and Loan officers, or most of them, were asked that question and they said, "The banks and other Building and Loans and insurance companies." I am merely asking Mr. Fairles the same question.

A. The competitors were other banks, Savings and Loan Associations, insurance companies, and individuals.

Q. Was the bank aggressively seeking mortgage loan business in (963) 1952 or not?

A. We were.

Q. And I think you testified you did not exhaust all of your available mortgage money in mortgage loans in 1952?

A. That is right.

Q. Now, just so the Court may understand the method of bookkeeping at the bank, when a mortgage loan is made what documents are signed?

A. There is a real estate mortgage signed. and a real estate mortgage loan, application for it.

Q. Yes. And, is it the practice of the bank to record the mortgage?

A. It is.

Q. And the record of those mortgages appears in the abstract, Exhibit 65, does it not?

A. That is right.

Q. That is, those made in 1952?

A. Yes, sir.

(983) Lansing, Michigan,
Tuesday, July 15, 1958,
9:30 o'clock A.M.

(1054) The Court: With respect to the Savings and Loan records.

My thinking is that probably technically I should say that these exhibits are not to be received until they have been properly identified, and whatever substantiating documents are necessary to be produced in order to make them admissible have been actually produced.

But, that does not make a very workable situation for the next day or two here. You are wanting to have the exhibits so you can question witnesses about them, and read part of them into the record, and treat them as though they were actually in evidence, and if I say "No, they are not in evidence," then technically you wouldn't have any right to use them. I do not want to put you in that position, or myself either. I want to go as far as we can within the next two or three days, or a day or two, as the case may be; so it seems to me it would be a fair statement to say they were admitted conditionally. That often happens in the course of a trial; we admit a certain document like a photograph because the lawyer says, "I will have the photographer here this afternoon who will identify it," and I take his word (1055) for it and let it in evidence, and it seems to me

we could follow something like that here, that these are received conditionally and you may treat them, as far as examining witness is concerned, just as if they are in evidence, but they are received upon the condition and with the understanding that if required you will produce the documents that the court rules are necessary to be produced in order to make them admissible. Such, for instance, as these journal entries here that you put in this morning, that I did receive in evidence, Exhibits 4-A-21, 4-A-22, and 4-A-23.

Now, there will be other documents of a similar character that may conceivably require to be produced after Mr. Dexter gets through. If I do, they will have to be produced, and if for any reason they are not produced, and I cannot anticipate from what you said, of course I will have to strike out the exhibits that were so received conditionally. I do not anticipate that would happen; but so far as the procedure, they are received conditionally at this time, and you may, as far as asking questions is concerned, go right ahead and ask your witnesses questions about them as if they were in evidence.

If for any reason they are eventually stricken out, everything in reference to them will have to be stricken out; and I presume at that time you will make it part of your separate record.

(1056) Mr. Klein: The exhibits we are talking about are Exhibit 3—

The Court: The report to the Controller.

Mr. Klein: 4-A, 4-B, 4-C, 4-D, and 4-E; and in respect to those, there is no question that the photostatic copy may be substituted for the original report to the Board of Directors, I assume. Is that right, Mr. Dexter?

Mr. Dexter: Yes.

Mr. Klein: 5-A, 5-B, 5-C, 5-D, 5-E, 5-F, and 5-G, which are also photostatic copies of reports to directors;

and I understand in respect to those, Mr. Dexter, the photostats may be substituted for the original reports in the bound volumes?

Mr. Dexter: We would make no objection to them on the basis that they were photostats rather than the originals of the bound volumes.

Mr. Klein: Then 5-H, which is a recapitulation, and various summaries from these various other exhibits, Exhibit 98 and Exhibit 99, which are also summaries, most of which are based on exhibits already admitted, and some on one or two exhibits, or several exhibits conditionally.

And then I suppose, in view of your Honor's statement about the Building and Loan Associations, that also refers to the series of exhibits 36 and 37, the monthly report of the Building and Loan filed with the Secretary of (1057) State for December 31, 1952; and in the 37 series the annual reports filed with the Secretary of State of the State of Michigan.

The Court: I think that is true, Mr. Klein.

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(1060) FAIRLES, RUSSELL, thereupon resumed the stand as a witness on behalf of the Plaintiff, and testified further as follows:

Direct Examination (continued)

By Mr. Klein:

Q. Mr. Fairles, we were discussing the question of savings, time savings accounts. Would you describe the difference between time savings accounts and commercial accounts in the bank?

A. Commercial demand deposits are payable on demand.

Q. You pay interest on it?

A. We do not pay interest on demand deposits or commercial deposits.

Q. And savings accounts?

A. Savings book accounts, there is a 30-day notice may be invoked if desirable, and then there are time certificate of deposits accounts that are issued for a specific time.

Q. And I think you gave us the changing interest rates on the time-book accounts, savings accounts, did you not, before?

A. I did.

Q. Would you give us the interest rates paid on the certificate of deposit accounts you just referred to?

A. Effective, or at a committee meeting held December 30, 1947, the matter of rate of interest to be paid on time certificate of deposit was presented and discussed. Upon motion duly (1061) made and seconded, the committee unanimously approved a recommendation to the Board of Directors providing for payment of interest on the following basis:

Time certificate deposit, 90 days to 6 months, interest at the rate of one-half of one per cent. Seven months or more, interest at the rate of one per cent.

Effective, or at an executive committee meeting held February 27, 1948, upon motion duly made and seconded, the following rates of interest upon time certificate deposit to be issued under authorization of the Board of Directors February 20, 1948, was unanimously approved.

Q. You don't have to give us the resolution. Just give us the interest rate and the basis for the interest on the certificate.

A. On deposit six months, less than one year, one per cent per annum from date of issue upon 30 days' written notice.

On deposit one year, less than two years, one and a quarter per cent per annum from date of issue upon 90 days' written notice.

On deposit two years, less than three years, one and a half per cent per annum from date of issue upon 90 days' written notice.

On deposit three years, less than four years, one and three quarter per cent per annum from date of issue upon 90 days' written notice.

(1062) On deposit four years to less than five years, two per cent per annum from date of issue upon 90 days' written notice.

On deposit five years, two and a half per cent per annum from date of issue upon 6 months' written notice.

As of April 27, 1949, the interest on certificates was changed to the following: on certificates of deposit, interest is to be paid at the rate of two per cent per annum for six months to less than five years and two and a half per cent per annum for five years. Interest may be paid at the end of each six-month period if requested, and if paid, it is to be endorsed on the reverse of the certificate and registered properly.

On January 22, 1953—

(1063) Mr. Dexter (interposing): I assume, your Honor, that that is on a separate record.

Mr. Klein: Separate record.

The Court: Very well.

Q. (By Mr. Klein): Go right ahead, sir.

A. (Continuing): —time certificates of deposit were authorized to be issued at $2\frac{1}{2}\%$ per annum if on deposit for a six-month period. See, that eliminated the five-year requirement. We commenced paying interest on the basis of $2\frac{1}{2}\%$ for six months' money.

Effective January 1, 1957, we paid interest at the rate of 3% upon six months' notice. That was when the rate was officially increased to 6% by the Federal Reserve:

Q. 6% or 3%?

A. I mean 3%, I'm sorry. By the Federal Reserve.

On June 10, 1955 we commenced paying 2½% per annum, from date of issue on non-negotiable savings deposit receipts.

Effective January 1, 1957 we increased the rate to 3% on these savings receipts.

I believe that brings us down to the present time. We are paying 3% on savings receipts. We are paying 3% on time certificates of deposit in which six months' notice is required.

Q. And what about regular savings books?

A. Regular savings passbook accounts, effective January 1, 1957, we commenced payment at the rate of 3% per annum. That was (1064) mentioned previously.

Q. In 1952 or prior did the bank have any special thrift plan?

A. We had a Christmas Club plan, and we consider all of our savings book accounts thrift accounts—savings accounts or thrift accounts.

Q. How about your certificates of deposit?

A. Prior to the time we increased the rate on savings book accounts to the higher rate, we had a great many of thrift depositors in the time certificate of deposit classification.

Mr. Dexter: Your Honor, of course we would reserve the right to cross examine Mr. Fairles at the time that we have had a chance to make an examination of the books and records, since his testimony has been completed.

(1066) DE YONKER, ARTHUR F., was thereupon called as a witness on behalf of the Plaintiff, and, being first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. . . . You are employed by the Michigan National Bank?

A. At the Flint office.

Q. Flint office of the Michigan National Bank?

(1067) A. That is right.

Q. And what is your official title?

A. I am Vice-President in charge of the Mortgage Department.

Q. And how long have you occupied that position with the bank, Mr. DeYonker?

A. Well, I started in 1934 with the Michigan National—or, with the National Bank of Flint, and that was purchased by the Michigan National Bank in 1942; and prior to that time I was Assistant Cashier, and in 1943 became Vice-President.

Q. So that you have been a vice-president in charge of the mortgage loan department since 1943?

A. That is right.

Q. And how long have you lived in the Flint area?

A. About 24 years.

Q. And will you tell the Court what the function of the mortgage loan department of the Flint office has been?

A. Well, of course Flint is part of our residential city—I mean we have a lot of General Motors plants,

and there are necessarily a lot of factory workers, so our community is made up of homes, to provide for these factory workers. We do not have the high-priced houses that we have in other communities. So, our function there was to provide housing, because General Motors has expanded their plant facilities and their square feet by increasingly numbers, and, of course, it was the job of the banks and Associations to (1068) provide mortgage moneys for this new housing.

Q. And how large a city is Flint?

A. Well, the Flint area that we speak of, Genesee County is between, about 275,000; the city proper is about 165,000.

Q. And in what area does your mortgage loan department operate?

A. In Genesee County.

Q. Genesee County only?

A. Yes.

Q. Now, I will address myself to the year 1952, Mr. DeYonker, except as I indicate otherwise.

In 1952, what types of mortgages was the bank taking on properties in Genesee County?

A. Well, we made about three hundred and sixty mortgages in that year, and less than twenty of them were of a type other than residential. It was chiefly residential. We do not have any side industries that are required to borrow. And, of course, we have a few churches, but other than that it is entirely residential. Less than twenty of the three hundred and sixty mortgages we made in 1952 were of a type other than residential.

Q. Now, considering the residential mortgages; what types of mortgages did you employ in that year?

A. Well, we had the FHA, VA, and conventional, or sometimes called the regular mortgage.

Q. And would you describe to the court what an FHA mortgage is; (1069) what is that?

A. Well, an FHA mortgage is a mortgage loan, of course, on which the borrower is able to borrow a higher percentage of the value of the property than a regular mortgage, because you are not limited to the limitations which were in effect then of sixty per cent; and the mortgage is then insured by the FHA; the fee is paid in connection with your monthly payments, called mutual mortgage insurance, so the bank is protected against any loss in case of foreclosure.

Q. You said sixty per cent; what type of mortgage were you referring to?

A. Conventional or regular type mortgage.

Q. So you could loan more money on the same type of property under an FHA type mortgage?

A. Yes.

Q. In 1952?

A. In 1952 we could loan ninety per cent of the first \$7,000, and it was a sliding scale. We could loan then 85 per cent of the next \$3,000. In other words, a \$10,000 mortgage would require a down payment of \$1,150.

Q. I see. And, on a conventional you would have to require forty per cent of that \$11,000 down, is that roughly right?

A. Yes, that is right.

Q. At a minimum?

A. We could loan sixty per cent, which would be the maximum of (1070) the loan.

Q. Now, on the FHA mortgage what was the rate of interest?

A. Four and a quarter per cent.

Q. And what charges were there in connection with the FHA type mortgage?

A. Your charges are no different than a conventional mortgage, but in the program set up by the FHA you do pay a year's taxes in advance, and you pay your insurance in advance for three years; in most cases it is three years; you can pay just one year, but as far as the cost part, there is no different costs in an FHA mortgage than there is on a conventional mortgage. You still must have your attorney's opinion, and you must record the mortgage. You must have an appraisal of the property. And, in our case, of course, we have a survey of the property. We feel it is good protection to the customer to know that the house is built on the right lot.

Q. And what about the term of the mortgage, in number of years, FHA?

A. Well, the maximum was twenty-five years. Our average mortgage on an FHA in 1952, the term was 21½ years.

Now, VA it was also 21½ years. They were also permissible to go to 25 years.

Q. Sticking to the FHA for a moment, Mr. DeYonker, what was the procedure that your office went through in connection with the execution of an FHA mortgage?

(1071) A. Well, of course, to start with you must file an application for a firm commitment. Most FHA mortgages, a builder will arrange the conditional commitment prior to the time the applicant comes to us, so the applicant does know how much of a mortgage he can get on that property, provided he meet the credit requirements.

Then we get their credit report. We must get a verification of their earnings, and we must get a verification of their bank deposits, and we send that to the FHA,

and if it meets their approval they issue a firm commitment on which we can close the mortgage.

Q. And in 1952, what was your experience so far as the time necessary to close an FHA mortgage loan?

A. Well, I would have to break that down in two parts. If we had to appraise the property, which we only have to do in five to ten per cent of the cases, it would take about three weeks to a month.

If we only had to check the credit—we have the appraisal made and inspections of the property and everything made, then it would take about, the maximum of two weeks.

Q. Now, on the VA type mortgage, would you explain that briefly to the court, what that involved?

A. Of course that is a mortgage made only to veterans, and they can only get one loan. They must have their eligibility, which (1072) is given by the government, and if they meet that requirement then they are eligible to borrow on the loan, and a portion of that loan is guaranteed by the government.

Q. I see. And what was the rate of interest on that?

A. Four per cent.

Q. And what additional charges were there on this type of mortgage?

A. Well, the charges were about the same as on FHA. You would have to do the same thing, check your title and record your mortgage, and if you want a survey of the property, and you want an attorney to check the title.

Q. And what was the time that was necessary to close that sort of a mortgage loan?

A. Well, the VA mortgage, of course they were quite disorganized down at Detroit there, and the time was,

oh, we would go from two to three months before we could get a VA mortgage through. They were very slow, and I say the reason was they had a very large volume put on them, and the men were not trained in the mortgage business, and we found it hard to get the type of service that we got from FHA.

Q. So that it took a longer period of time?

A. It took a longer time, yes.

Q. Now, what about the term in numbers of years?

A. Our average mortgage was 24½ years.

Q. And how long could such a mortgage be given for?

(1073) A. 25 years.

Q. Now, your conventional mortgage, so-called, would you describe to the Court what you mean by that term, as you used it in 1952?

A. That is a mortgage, of course, without being insured, or without being guaranteed. The law at that time was that you could loan up to sixty per cent of the appraised value of the property; and forty per cent of the mortgage was amortized in ten years, if it was, you could extend it for another ten years.

Q. What do you mean by that?

A. I mean, of course, all mortgages were monthly payments. A mortgage that is sixty per cent, in fact any mortgage over fifty per cent must be amortized monthly on a conventional mortgage. So if the monthly payment—by making monthly payments at the end of the ten year period your balance was less than sixty per cent of the amount, of the original amount of the loan, you could then extend the balance over another ten years.

Q. And did you do that in fact in 1952, do you recall?

A: Yes, we did that in a few cases; not too many. There was quite a mortgage turnover, and a lot of mortgages are really paid before the ten years is up.

Q. What do you mean by that?

A. Well, I mean places are sold, or families go in and buy a (1074) house, they have no children, and they buy a two-bedroom house, and four, five or six years they have two or three children and they need larger quarters. So we have had, as I say, a heavy turnover because of the heavy extra employment that was put on by General Motors.

Q. Now, were all mortgages amortized, as you put it, on a monthly basis, all of these mortgages we have been talking about?

A: Yes; we didn't have a mortgage that wasn't amortized on a monthly basis, not one mortgage in our portfolio.

(1075) Q. One other thing I would like to cover with you on the veteran's mortgage. What is the percentage of appraised valuation which you could loan on?

A. Well, you could loan one hundred per cent. Of course, a VA is different from an FHA. A VA mortgage, you could not make a mortgage, of course. Let's put it this way. The veteran could not pay more than the appraised value.

In other words, if the property was offered for \$10,000 and the VA appraised it at \$9,500, the veteran could not close the mortgage and pay more than \$9,500 for the property.

Q. Do you remember what your actual practice was in 1952 so far as the percentage of appraised value that you were loaning in the case of veterans?

A. In most cases we would go the hundred per cent. We would have to size up each case. We had some ten per cent, and we have had some hundred per cent.

Q. And in the case of the FHA would you say how much you were loaning as a matter of practice?

A. Well, we loaned what the FHA would commit for.

Q. And so far as conventional, what was your practice in 1952?

A. Well, most of our mortgages were 60%. Of course, if the people only required a 50% mortgage, that was all they wanted, and the appraisal wasn't more, we would make it, and the time on our conventional mortgage was practically ten years. In fact, it is about 9.7 is the actual time that we drew the (1076) mortgages for.

Q. Now, was there any pre-payment penalty in your conventional mortgage?

A. No, there was not.

Q. What do you understand I mean by the term "pre-payment penalty"?

A. Well, pre-payment means if you pay the mortgage ahead of schedule.

Q. And was there any pre-payment penalty in the FHA type mortgage in 1952?

A. Well, there was no penalty up to June 30, 1952. In 1948 the President issued an order, time of the Korean War, that permitted VA's to pay as much on their mortgages as they wanted without penalty. On June 30, 1952, that was removed, and after that time and up to the present time there is a one per cent pre-payment penalty, although you are permitted to pay 15% of the original amount of the mortgage each calendar year. You can make extra payments if you wish without penalty.

Q. And was there any pre-payment penalty in the GI type mortgage?

A. No, there never has been.

Q. During 1952 you made all three types of these mortgages, is that right?

A. That is right.

Q. And did you make each type of such mortgage during each quarter (1077) of 1952?

A. Yes, we did.

Q. And I have asked you to select samples of each type of mortgage. Have you done so?

A. I didn't select them. I told the girl that is in charge of our mortgage to pick one out of each one.

Q. And did she do that?

A. She picked out the ones. Some of the VA's were paid. I think one-quarter we didn't have a VA.

Q. Now, I will show you what has been marked as Exhibit 101-A-1 through 101-A-10 and ask you just first to identify to the Court what that is. I mean just tell us generally what it is first, will you please?

A. This is a mortgage note on an FHA mortgage that we made.

Q. Before you do that would you just describe generally what those ten exhibits are?

A. Those are photostatic copies of the original documents which I have with me, mortgages made in 1952.

Q. And do you have four FHA types of mortgages?

A. Yes.

Q. And they are mortgages that were actually executed?

A. That is right.

Q. And the loans made?

A. That is right.

Q. And do you have four conventional?

(1078) A. There are three conventionals, I think, and three VA's.

Q. And where possible you have gotten them for each quarter of the year; is that right?

A. That is right.

Q. And will you explain what Exhibit 101-A-1 contains, what it consists of?

A. That is an FHA form mortgage note in the amount of \$7,200 to our borrower with interest at four and a quarter per cent payable twenty years.

Q. And what are the other documents? Just identify them, if you would.

A. An FHA mortgage— * * * And the application to the FHA for insurance and a photostatic copy of the ledger sheet.

Q. And that all consists of 101-A-1?

A. That is right.

Q. And is 101-A-2 the same sort of thing, only for a mortgage in the second quarter?

A. That is right, April 15, 1952.

(1079) Q. Consisting of the same papers?

A. That is right.

Q. And 101-A-3 is what?

A. That is an FHA for the third quarter, July 12, 1952.

Q. And 101-A-4 is what?

A. An FHA mortgage made November 8, 1952.

Q. For the fourth quarter?

A. That is right.

Q. And 101-A-5?

A. That is the conventional mortgage made in March 1952.

Q. Now, what does the conventional mortgage set consist of, 101-A-5? Would you simply identify the documents?

A. Yes, it is a mortgage note and a mortgage and the application and the ledger sheet.

Q. And what is 101-A-6?

A. That is a conventional mortgage made April 1952. It has the note, mortgage, application and ledger sheet.

Q. And 101-A-7 is the same, except that it is for another quarter; is that right?

A. That is right.

Q. (Continuing): —as A-6?

A. That is right.

Q. And what is 101-A-8?

A. That is a conventional mortgage dated October 25, 1952, conventional mortgage, mortgage note and mortgage and ledger sheet.

(1080) Q. And 101-A-9?

A. That is a VA type mortgage.

Q. What does that exhibit consist of?

A. Mortgage note, mortgage, application form, and photostatic copy of the ledger sheet.

Q. And 101-A-10 is what?

A. That is also a VA mortgage, August 1952, a mortgage, mortgage note, application and copy of the ledger sheet.

Q. Now, did you bring with you the originals of all of these documents?

A. Yes, I did.

Q. And you have them with you here in court?

A. Yes, sir.

Mr. Van Zile: I would like to offer Exhibits 101-A-1 through 101-A-10.

Mr. Dexter: May I ask what they are being offered for?

Mr. Van Zile: They are being offered in proof of the sort of mortgage business we were engaged in in 1952.

Mr. Dexter: Your Honor, I would object to them.

(1082) The Court: Wouldn't it be better to have the record have some question in it as to whether those forms were the forms used in the different types?

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Q. (By Mr. Van Zile): Now, with reference to each of these Exhibits A-1 through 10, did each of them during the quarter which they are taken from, were they the same type of mortgage, mortgage note and application blank and ledger sheet that were used during that quarter? Is that correct, Mr. DeYonker?

A. That is right. For the entire year.

Q. Now, you do not contend, do you, that other mortgages would be identical in amount, and obviously not as to mortgagor, and not necessarily as to rate of interest?

A. Well, your FHA and your VA would be about the same rate of interest. There was a change on the FHA mortgage from $4\frac{1}{4}$ to $4\frac{1}{2}$ during the year, so you may get that variance of a quarter of one per cent when the rate was changed.

Q. Well, may I ask you this question—

A. (Interposing): I think these are all $4\frac{1}{4}$, but I think there was a change, I believe, in the latter part of the year.

(1083) Q. Let me ask you this question: Do each of these mortgages during the quarter from which they are taken, are they fairly representative of the other mortgages of the same type which you made?

A. They are.

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The Court: They may be received.

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(1084) Q. (By Mr. Van Zile): Now, referring to Exhibit 101-A-1, which is an FHA mortgage in the first quarter, Mr. DeYonker, is there not an application form?

A. An application form.

Q. And was that the first step in procuring an FHA loan, the filling in of that application?

A. That's right.

Q. And what information does it contain in general?

A. Well, it asks the amount of the loan that they request, the length of time, the rate of interest. It also gives the financial statement of the parties, showing what their bank account is, what other assets they have. In this case it was (1085) some Series E Government bonds, furniture, and an automobile. It shows that they were employed at AC Spark Plug for seventeen years, and it shows the amount of life insurance that they carry, and also shows their annual income and their annual fixed charges, and their approximate housing expense.

Q. Now, when that application was made out, what was the next step?

A. Well, we first got the credit report from the credit bureau. We also had the verification of this bank account which was at the Merchants Mechanics Bank. We filed that with the FHA, together with the conditional commitment, and asked for a firm commitment. This application is for a firm commitment.

Q. And after approval, I take it the mortgage and mortgage note were executed at the closing; is that right?

A. That's right.

Q. And your original ledger sheet, which is also a part of that exhibit, was made up at the time of the closing; is that right?

A. That's right.

Q. Now, what does the ledger sheet show?

A. The ledger sheet shows the name, it shows the FHA case number, it shows the address of the property, it shows that it is a dwelling, it shows what the amount of the loan is, the maturity, and it shows the appraised value taken from the FHA firm commitment.

(1086) Q. And then, of course, it shows the payments?

A. It shows a breakdown of their principal and interest and your escrow payment, which is, of course, required on an FHA mortgage.

Q. And does it show that it is a dwelling?

A. Yes.

Q. And that is your "Dwg." appearing on that sheet?

A. That is right.

Q. Now, taking your conventional, your first conventional, which I believe is Exhibit 101-A-5, what was the first step occurring in that?

A. The filing of the application.

Q. The filing of the application?

A. Yes.

Q. And what does your application show contained in that exhibit number?

A. Well, they asked for a \$7,500 mortgage. Of course, we could only make it for ten years. They did not want to pay the mortgage off in ten years, and we agreed on a principal and interest payment of \$65, which would take, oh, probably fourteen years for that mortgage to amortize. Of course, a good deal more than 40 per cent would be amortized at the end of ten years, so there would be an extension made.

This application—of course, the FHA is filed on their own forms. Conventional is filed on our form. It asks

(1087) about the same information: What a man's assets are, his liabilities, what life-insurance he carries, what his income is, and what his annual charges are against his income.

Q. And what do you consider in approving a mortgage loan or disapproving a loan?

A. Well, of course, first of all, the loan must be less than 60 per cent of the appraised value—60 per cent or less. The man must have sufficient income and credit standing in order that he can reasonably meet the payments that are required.

Q. And how about the real estate?

A. Well, the real estate—of course, in this case it was a residence, and the appraisal would have to be of such amount that the mortgage closed would not be more than 60 per cent of the appraisal.

Q. And then how long did it take you before you would close a conventional mortgage loan such as that?

A. Well, it takes about ten days. Of course, that depends somewhat on the people—how soon they get their abstract posted; and our attorney can give us 48-hour service and a survey at the same time, so I would say ten days to two weeks is the average time on a conventional.

Q. And then you, of course, have the mortgage and mortgage note which were executed, right?

A. That's right.

(1088) Q. And the ledger sheet?

A. Well, the ledger sheet, of course, gives the name, shows the type of mortgage as regular, it shows the address of the property, it shows it is a dwelling, it shows that the appraisal of the property was \$12,750, it shows the monthly payment and the escrow payment.

Q. And it shows that it is a regular mortgage by type?

A. Yes.

Q. And when you say "regular," you mean the same as conventional?

A. That's right.

Q. Now will you turn to your GI type mortgage, Exhibit 101-A-9, and I take it the first step was again the application for a loan?

A. Well, no, that isn't the first step.

Q. All right. Would you explain the steps involved?

A. See, you must first determine whether a man has his eligibility before you go any further, and if he is a veteran, he comes in and he has a particular house in mind, why, he brings in his discharge. If he is honorably discharged, why, we will find out if he has used any of his eligibility. We get this certificate back, and then we proceed about the same as any other mortgage. We take his application, check his credit. Then the Veterans Administration makes the appraisal of the property.

Q. The application, though, that he eventually fills out is the same as on your conventional-type mortgages?

(1089) A. Same as our conventional, that's right.

Q. And after approval by the VA, I take it you have a mortgage note and a mortgage. Is that on their form?

A. On the VA form.

Q. Both of those?

A. That is required.

Q. And then you have a ledger sheet?

A. Which shows the address of the property, the term—this happened to be a 20-year mortgage—and it shows the principal and the interest and the escrow. It shows that it is a dwelling, and it shows the the appraisal—in this case the appraisal of the property was \$6,400 and the mortgage was \$6,000.

Q. So that it wasn't 400 per cent in that case?

A. He paid \$400 down.

Q. All right. Now, in Genesee County and the Flint area, what other companies or individuals were engaged in the business of loaning money on the security of FHA mortgages?

A. Well, the other three banks, the Citizens Commercial Savings Bank, the Genesee County Savings Bank, the Merchants Mechanics Bank, the First Federal Savings & Loan, and Cook & Anderson, which were mortgage brokers.

Q. And you have not mentioned Detroit & Northern?

A. No. They had never qualified to make an FHA mortgage.

Q. So they made none. And how about the GI or VA type mortgage? (1090) Were all of those firms or persons you have mentioned making that type of mortgage?

A. Yes, I would say most of them, except the Equitable. Equitable Life, of course, at that time they reduced their rates, and they were kind of raiding the portfolio of some of the banks, and that is why one of your former men testified that they reduced rates on mortgages, because they were more vulnerable to the type of mortgages that Equitable—

Q. . . . Well, as I understand it, in any event—let's pass on to another question, Mr. DeYonker—and on the conventionals, what other individuals or institutions than those you have mentioned were engaged in making—

A. (Interposing): They all made it. The Citizens Commercial Savings Bank, the Genesee County Savings Bank, the Merchants Mechanics Bank, the First Federal Savings & Loan, and Detroit & Northern, and Equitable

Life Insurance, and Cook & Anderson, mortgage brokers.

Q. And did you say Detroit & Northern was making the VA type loan?

A. Yes, they are.

(1091) Q. Now, during 1952 were there occasions, Mr. DeYonker, when you refinanced mortgages which were held by other institutions, and were they refinancing mortgages held by you?

A. Yes.

Q. And specifically, were there instances during 1952 where you refinanced mortgages held by savings and loan associations in Genesee County and the likewise refinanced mortgages which you held?

A. Yes.

Q. And now will you describe what you mean by the term "refinancing"?

A. Well, I brought some cases here with me, some samples, but here is what we do. We will say that the Detroit & Northern has a mortgage of \$5,000 on a piece of property, and that maybe the value of the property is \$10,000. A new buyer comes along and he wants to buy it, but maybe he has only got \$1,500 down.

If they can't handle the refinancing of it, why, he comes to somebody that is making FHA mortgages, because that is the only way that you could borrow that portion, and we have got some of those, and others have.

Now, at the time we close our mortgage, we pay off his mortgage, get a discharge of that and clear the records.

Q. And when the reverse happens, what occurs?

A. Well, they pay us off.

(1092) Q. Now, is it always, in the refinancing, the same mortgagor that is involved?

A. No, in most cases it is not. There is a few cases it is, but most cases it is not. It is for sale of the property to another party.

Q. But in a refinancing, it is always the same piece of property; is that correct?

A. That's right.

Q. Now, I have asked you to select examples of that during 1952. Have you done so?

A. Yes.

Q. And I will show you what has been marked as Exhibit 102-A-1 through 17, 17 examples of this. Are those all of the examples?

A. That is the only—of course, I say some of these other mortgages have been paid and our records would not be there, but the mortgages that we had, of course we had a record where we paid them up, but where we were paid off, we didn't have any record.

Q. All right. Now let's take up first 102-A-1, and simply tell the Court exactly what that exhibit consists of.

A. Well, this was the mortgage on 1316 Denies Street in Flint, Michigan, on which there was a mortgage to Gerald W. and Jean Barton at the First Federal Savings & Loan Association dated April 9, 1949, recorded May 2, 1949, Liber 844 and pages 20, 21, 22 and 23, in the amount of \$5,000.

(1093) We made a new mortgage in December of 1952 to a Charles E. Hoskins in the amount of \$9,200, so in the process, we had a discharge of the above mortgage from the First Federal Savings & Loan Association dated December 24, 1952 and recorded December 31, 1952 in Liber 972, page 572.

(1094) Q. And do you have a picture of that residence?

A. Yes.

Q. And are you familiar with the residence?

A. Yes.

Q. And does it truly and correctly represent the residence as it was in 1952?

A. Yes.

Q. And next what do you have in Exhibit 102-A-1?

A. We have the photostatic copy—

Q. (Interposing): Certified copy?

A. Certified copy by the register—Earl M. Smith, Register of Deeds for Genessee County, and it shows the mortgage with a legal description and the terms of the mortgage.

Q. And what is the legal description, which is short in this case?

A. Lots 564 and 565, Lapeer Heights Subdivision.

Q. What do you have next?

A. Next we have the discharge of the mortgage that I have just read.

Q. And that is also certified?

A. That is certified.

Q. And that is from First Federal Savings and Loan Association?

A. That is signed by Mr. R. H. Parker, president.

Q. Next what do you have?

A. Next we have the mortgage itself.

Q. And what is the legal description on that?

A. Lot 564 and 565, Lapeer Heights, according to recorded plat (1095) thereof. That was an FHA type mortgage in the amount of \$9,200. We have that also certified by the Register of Deeds.

Q. Now, were all the mortgages involved in these exhibits certified, as well as the discharges?

A. Yes.

Q. By the Register of Deeds?

A. That is right.

Q. And do you have the same information on Exhibit 102-A-2, only for a different residence and mortgagor?

A. Yes.

Q. Would you simply tell us the association involved and the date of the mortgage and the date of yours and the mortgagor?

A. The mortgagor was Kenneth W. Croner and Anne Croner, dated September 7, 1951, and recorded September 21, 1951, to the Detroit and Northern Savings & Loan Association, Liber 929, page 527, in the amount—

Q. You can skip the recording, if you will.

A. (Continuing): \$8,000. Now, in this particular case we took an FHA. The house cost the man—he was a Fisher Body employee who was trying to build the house himself. I mean he did build—

Mr. Dexter (interposing): Your Honor, I think that is hearsay testimony.

A. Actually I waited on him.

(1096) Q. (By Mr. Van Zile): Just identify it. That is all we are doing at this time, Mr. DeYonker. I haven't offered them as yet, and I don't want to describe them at length. Just identify them. You just said you took a mortgage—

A. (Interposing): In the amount of \$12,000, FHA type mortgage.

Q. Was that with the same mortgagor?

A. That was with the same mortgagor.

Q. That is with Detroit and Northern?

A. That is right.

Q. And that was taken on what date?

A. It was taken on August 26, 1952, recorded the following day.

Q. Is there a picture of the house?

A. There is.

Q. And does that truly and correctly represent the house as it was in 1952?

A. Yes.

Q. And in Exhibit 102-A-2 you have the mortgage of Detroit and Northern?

A. That is right.

Q. With those mortgagors?

A. Certified copy.

(1097) Q. And the certified copy of the discharge and a certified copy of your mortgage; is that right?

A. That is right.

Q. And are the legal descriptions the same?

A. Yes.

Q. Now, 102-A-3 is what? Would you simply identify it by the institution holding the original mortgage and mortgagor?

A. Detroit Northern Savings & Loan Association, October 1950, and we took a mortgage September 27, 1952, in the amount of \$7,300. The original mortgage was \$2,500. It was discharged from Detroit Northern.

Q. And does that contain a picture of the residence on that property?

A. That is right.

Q. And does that correctly represent the residence as it was in 1952?

A. It does.

Q. And do you have supporting that certified copies of the original mortgage?

A. Mortgage discharge and new mortgage.

Q. All certified?

A. That is right.

Q. And 102-A-4?

A. That was a mortgage of Russell Sobey to Detroit Northern, January 4, 1952, and financed as to Fred and Rosemarie Harper, (1098) June 21, 1952, \$6,400..

Q. And that also contains a picture?

A. That is right.

Q. Of the residence?

A. That is right.

Q. And that correctly represents the residence as it was in '52?

A. That is right.

Q. And do you have certified copies of the mortgages supporting that?

A. We do.

Q. And the discharge. 102-A-5 is what?

A. That is a mortgage of Charles and Carrie Morton to the Detroit and Northern Savings Association, in the amount of \$7,685, dated May 19, 1947, and that mortgage was discharged by them to us, and we took a new mortgage in Irvin and Thelma E. Dillard in the amount of \$8,500.

Q. And you have pictures of that residence?

A. Yes.

Q. And does that correctly represent the residence as it was in 1952?

A. It does.

Q. And you have certified copies of the mortgages and of the discharge; is that correct?

A. That is right.

Q. And 102-A-6 is what?

(1099) A. That is property at 2429 Missouri of Louis C. and Marion Kamrath, the Detroit Northern, dated October 25, 1948, and we took a mortgage to Frank E. Pyscher on February 4, 1952, in the amount of \$7,200.

Q. And again there is a picture of the residence, and does that correctly represent the residence as it was in 1952?

A. That is right.

Q. And you have certified copies of the mortgages and of the discharges supporting that?

A. Yes.

Q. 102-A-7 is what?

A. That was a mortgage, also Detroit Northern Savings & Loan Association, dated March 22, 1948, in the amount of \$4,200, and we took a mortgage to a party by the name of Donald E. and Juanita Bunker in the amount of \$8,400 on June 11, 1952.

Q. Do you have a picture of that residence?

A. We do.

Q. And does that correctly represent the residence as it was in 1952?

A. It does.

Q. And do you have certified copies of the mortgage and discharge supporting that?

A. Yes.

(1100) Q. 102-A-8 is what?

A. That is also a mortgage, Detroit and Northern Savings & Loan Association, on 752 Clinton Street, to Darwin W. Gatlin, in the amount of \$6,635. We refinanced it to a Luther J. and Effe Fowler for \$8,400, and we received a discharge of the Detroit and Northern Savings & Loan Association mortgage.

Q. Do you have a picture of that residence?

A. I do.

Q. Does it correctly represent the residence as it was in 1952, to your knowledge?

A. It does.

Q. And you have certified copies of the mortgage and of the discharge?

A. Yes, sir.

Q. 102-A-9 is what?

A. That was also a mortgage to the Detroit and Northern Savings & Loan Association of Claude L. Han-

ley, in the amount of \$2,350. We made a mortgage to Norman L. and Ellen Jang Hallett in the amount of \$7,200.

Q. And you have a picture of that residence?

A. That is right.

Q. That correctly represents the residence as it was in 1952?

A. That is right.

Q. And do you have certified copies of the mortgage and of (1101) the discharge supporting it?

A. Yes.

Q. 102-A-10 is what?

A. That is a mortgage to the First Federal Savings & Loan Association by Francis H. and Beatrice R. Marien, dated August 23, 1950, in the amount of \$7,400. That mortgage was discharged and we made a mortgage to Paul J. and Helen Warren, in the amount of \$9,100, dated April 23, 1952.

Q. And you have a picture of that residence?

A. That is right.

Q. And does it correctly represent the residence as it was in 1952?

A. It does.

Q. And you have certified copies of the mortgage and of the discharge supporting it?

A. That is right.

Q. 102-A-11 is what?

A. This is a mortgage on which they paid us off. We had a mortgage of John S. and Winifred Wyman, dated June 20, 1952, in the amount of \$13,000. That mortgage was discharged by us and a mortgage made to the First Federal Savings & Loan Association by Michael W. and Genevieve Evanoff, in the amount of \$15,000.

Q. And that was in 1952?

A. That is right.

(1102) Q. And you have a picture of that residence?

A. We do.

Q. Does that correctly represent the residence as it was in 1952?

A. It does.

Q. And you have certified copies of the mortgage and the discharge supporting that, is that correct?

A. Yes, sir.

Q. 102-A-12 is what?

A. This is the mortgage that was with the Michigan National Bank of Cecil D. and Frances Sharpe, \$3,000. It was refinanced by the First Federal Savings & Loan Association to the same party, that is, to Cecil D. There was a marriage there and they took out a mortgage there jointly of \$5,000.

Q. And you have a picture of that residence?

A. That is right.

Q. Does it correctly represent it as it was in 1952, to your knowledge?

A. It does.

Q. And you have certified copies of the mortgage and the discharge supporting that?

A. That is right.

Q. 102-A-13 is what?

A. That was a mortgage that we had made to Charles E. and Dorothy E. Nemec, on May 3, 1952, in the amount of \$3,800. Our mortgage was paid off and parties by the name of John M. and (1103) Ruth M. Priestley made a mortgage to the Detroit and Northern Savings & Loan Association on March 23, 1957, in the amount of \$8,000.

Mr. Van Zile: That will have to be made a part of the separate record. I will offer it in that regard, except for our mortgage, which is in 1952.

Q. And you have a picture of that residence?

A. That is right.

Q. And does it correctly represent the residence as it was in 1952?

A. It does.

Q. And you have certified copies of the mortgage and the discharge?

A. That is right.

Q. 102-A-14 is what, Mr. DeYonker?

A. This was a mortgage that we had made to Joseph and Rosemarie McLone on April 16, 1952, in the amount of \$10,200. Our mortgage was paid off by the Detroit and Northern Savings & Loan Association on December 13, 1955, in the amount of \$9,750.

Mr. Van Zile: Again, we will offer the mortgage by the Detroit and Northern as a part of the separate record.

A. Yes, sir.

Q. And does it correctly represent the residence as it was in 1952?

(1104) A. Yes, sir.

Q. And do you have certified copies of the mortgage?

A. Yes, sir.

Q. Supporting it?

A. Yes, sir.

Q. . . . The next exhibit I believe is 102-A-15, and would you identify that, please?

A. That was the mortgage on 7502 Flushing Road by C. I. and Esther L. DeLaGrange, his wife, dated February 14, 1952, by the Michigan National Bank in the amount of \$12,500. It was refinanced in August, 1952, to the same parties, for \$13,500 by the Detroit and Northern Savings & Loan Association.

Q. And do you have a picture of that residence?

A. I do.

Q. And does it correctly represent the residence as it was in 1952?

A. That is right.

Q. And do you have certified copies of the mortgage and discharge supporting that?

A. That is right.

(1105) Q. And 102-A-16 is what, Mr. DeYonker?

A. That was a mortgage made by the Michigan National Bank to Allen C. and Patricia A. Porter on August 8, 1952, for \$7,600, and that was refinanced—that was another one in 1954.

Q. All right. Just tell us what it was.

A. It was a mortgage made by the Detroit and Northern Savings & Loan Association in the amount of \$4,500 to Catherine M. Birchmeier.

Q. And do you have a picture of that residence?

A. I do.

Q. Does it correctly represent the residence as it was in 1952, Mr. DeYonker, to your knowledge?

A. It does.

Q. And do you have certified copies of the mortgage and discharge supporting it?

A. Yes.

Q. And 102-A-17 is what?

A. That was a mortgage made by Paul and Ruby M. Sharpe to the Michigan National Bank on April 5, 1952, in the amount of \$5,500. It was refinanced by the Detroit and Northern Savings & Loan Association to Clifford Lee and Dorothy M. Raymond in the amount of \$6,705 on September 18, 1952.

Q. Do you have a picture of that residence?

A. I do.

(1106) Q. Does it correctly represent the residence as it was in 1952?

A. It does.

Q. And do you have certified copies of the mortgage and discharge supporting that?

A. I do.

Mr. Van Zile: We would like to offer Exhibits 102-A-1 through 17, with the exception of those mortgages which were dated after 1952; as to those we would request that they be made a part of the separate record, your Honor.

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Mr. Dexter: Mr. Van Zile, for what purpose were these offered, showing the refinancing transactions?

(1107) Mr. Van Zile: This, to me, at least, is the essence of competition. I do not see how you can prove it more exactly, because it is the identical property, and in many cases under the identical mortgagors, and that is competition.

Mr. Dexter: Are these the complete transactions that they had in 1952?

Mr. Van Zile: No, they are not. I thought I asked Mr. DeYonker that. Are they all?

A. No, they are not.

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The Court: They may be received subject to the statement of Mr. Van Zile that those after December 31, 1952 are made a part of the separate record.

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(1111)

Cross Examination

By Mr. Dexter:

Q. Now, Mr. DeYonker, in reference to samples of mortgages, Exhibits 101-A-1 through 101-A-10, do you know what portion of your total mortgages that sampling represents that you had in 1952?

A. Well, residential mortgages, we made about 2 million 200 thousand worth of mortgages. I haven't totaled these up, but it is not too hard, I guess.

Q. I think you have testified before that you had 360 mortgages?

A. Yes.

Q. And 20 of those were non-residential?

A. That's right.

Q. Do you know what amounts the 20 represented of your total mortgages?

A. Yes. They represent in around to half a million dollars. We had some church mortgages in there, and we had a few commercial mortgages. I don't remember the exact amounts of it, but as I say, the church mortgage also includes the rectory and maybe a sisters' house.

Q. So they were substantial in amount?

A. That's right.

Q. More substantial in amount than they were in number.

A. That's right.

Q. Because they were larger mortgages?

(1112) A. That's right.

Q. Do you know what portion of your mortgages were the conventional mortgage?

A. Yes, I have the figure.

Q. Of course, we are directing our questions to the year 1952.

A. In 1952 we had 148 conventionals, 9 VA's and 180 FHA's.

Q. Now, what was the interest rate on the conventional mortgages?

A. They varied from 5 to 6 per cent.

Q. Was that interest rate higher than on the VA and FHA mortgages?

A. Yes.

Q. Would it have been more profitable to the bank to have made more conventional mortgages?

A. Well, you wouldn't have been able to get the mortgages because the down payments were so heavy, and as I said before—

Q. (Interposing): Would you answer my question, please?

A. Well, you asked me. I have to cover the subject.

Q. Was it more profitable, the conventional mortgage?

A. I will answer it this way, then: If you can get them; but they are not available, so you couldn't get them.

Q. That was because of the larger requirement of down payment?

A. That's right.

Q. Now, do you know what limit you had in reference to your conventional mortgages? I understand it was ten years. Is that right?

(1113) A. Ten years, with an extension of ten years if 40 per cent of the amount is amortized in the first ten years. So in reality, you have a 20-year mortgage. These mortgages that you have in there, some of those will run fourteen and fifteen years by the term of their monthly payment.

Q. You mean actually the conventional mortgage, under the National Banking Act, could run over ten years by its terms?

A. That's right. Oh, yes.

Do you want to refer here to the mortgage of Roney? This mortgage was made \$7,500 at \$65 a month.

Now, if that mortgage would have paid \$75 a month, it would have taken 11 years and 7 months for the

mortgage to pay. So this would figure somewhere around 14 years for this mortgage to amortize.

Q. But it was a ten-year loan, was it not?

A. It was drawn for ten years but not amortized for ten years.

Q. But wasn't there a large payment required at the last payment under the terms of the mortgage?

A. No.

Q. But it was only a ten-year mortgage?

A. That's right. It had the provisions that they could—and we told them that when we closed the loan—that at the end of the time, if they were satisfactory and 40 per cent was paid, we would give them an extension for the required years.

(1114) Q. That wasn't provided for in the mortgage?

A. No.

Q. You just told them that?

A. That's right.

Q. But they had no right for any such extension as a matter of contract right?

A. Well, because we explained to them what it was at the time; that we were limited to ten years, and we couldn't draw it for longer, but what we would do at the end of ten years—

Q. (Interposing): In other words, you made a verbal promise to them that you would extend it?

A. That's right.

Q. But if you did, you would have to make out a new mortgage?

A. No. We just make an extension agreement. All you do is—you don't require any mortgage and any recording. You can just make an extension agreement stating that the mortgage will be carried for so many more years—if it is four or five—and that the

monthly payment will be the same. Very simple operation.

Q. At the end of the ten-year period?

A. That's right.

Q. Is the extension agreement recorded?

A. No, it is not recorded. We give them one copy and we keep a copy.

Q. And these Exhibits 101-A-1 through 101-A-10 indicate the type (1115) of transaction that you have been testifying to?

A. That's right.

Q. Now, in reference to Exhibits 102-A-1 through 17 in regard to refinancing, as I understand it, you said that this did not include all of the refinancing?

A. No.

Q. Why did you pick these particular ones?

A. I tried to get the ones in 1952 because I thought that was the year that—

Q. (Interposing): Were these all that you had in 1952?

A. As far as I could determine, but we have them, of course, every month, or every two months.

Q. But as far as you could determine by searching your records, you had seventeen refinancing transactions in 1952?

A. That is true, but that doesn't represent all of them, because we would have a lot of mortgages that had been paid off prior to that time, see, so we wouldn't have any—that have been paid off.

Q. But this would be the refinancing in 1952?

A. Not all of it, no.

Q. Would you explain that, please?

A. Well, there may be mortgages that we made at this time but I couldn't produce the record because the mortgage had been paid off.

Q. In other words, do I understand that you do not have available (1116) in your records the applications and mortgages and other documents like you have in Exhibit 101-A-1 through 101-A-10 if the mortgage has been paid off since 1952?

A. Why, no. If a party pays us, they want their mortgage and note and their application and their appraisal and their attorney's opinion and their abstract, and they are entitled to get it. We can't keep it.

Q. You do not have those documents for mortgages that you took in 1952 that were paid off since that date?

A. That's right. There is no record. There is no benefit to us in those records. We give those back to those people. If they sign a mortgage or note, they are entitled to have those papers back.

Q. Is the basic information in those documents found any place else? Is the basic information in regard to the loan on those documents found any place else in your books and records?

A. No.

Q. Then in terms of Exhibits 101-A-1 through 101-A-10, would you explain how this sampling was taken?

A. Well, I explained that before. I told the girl that is in charge of the mortgage department I would like to have an FHA mortgage, a VA mortgage, and a conventional mortgage for each of the quarters. I gave her no instructions what to pick out. I said, "You just pick out one and let me look at them to see if they are right." She did, and I accepted the (1117) one she took. Those are no different than any other mortgages we had.

Q. That is, you are talking in terms of the actual legal documents you use?

A. That's right. They are the same FHA forms, same VA forms, same percentage of loan to appraisal. They are all the same.

Q. Where did you get the information that appears on the first sheet of Exhibits 102-A-1 through 17 in regard to refinancing?

A. Where did I get the information?

Q. Yes.

A. Well, of course, if we take a mortgage, in our attorney's opinion it shows that there is an outstanding lien. We have our abstract examined, posted to date and examined. When we came to close the mortgage to Hoskins, we found that there was an outstanding mortgage to the First Federal Savings & Loan.

Q. Well, where did you get that information?

A. From the attorney's opinion.

Q. You mean that information that you have there in that exhibit was something copied from the attorney's opinion?

A. No, we still have this mortgage here.

Q. No. I am talking about the source of the information that you have written here.

A. Oh, sure. That attorney's opinion will disclose whether there are any outstanding liens on the property.

(1118) Q. You took the attorney's opinion as the authority for making up that information?

A. Sure. We took it from the abstract, but the attorney's opinion in—

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Q. . . . I am just trying to find out from what source you got this information to compile—

A. (Interposing): From the abstract and the attorney's opinion.

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Q. . . . I am talking about the information you have.

A. This old mortgage and the discharge.

Q. Let me ask you this: This is not a book of original entry, right?

A. That's right.

Q. And this is not a photostat of anything?

A. No.

Q. So that this information had to come from some other source and be recorded on this piece of paper.

A. O.K.

Q. I want to know from what source you got that information.

A. All right. We get the mortgage from the abstract and the (1119) attorney's opinion. Then we get this discharge from the recording—we make the recording of that discharge. We also record our own mortgage and have it in our portfolio. This discharge is recorded ourselves, so it comes back to us, and that is set up in our records.

Q. But this isn't a compilation of anything you have in reference to all your mortgages?

A. It is in every file.

Q. It is in every mortgage file?

A. Oh, sure. Not the sheet, but the information. Oh, sure.

Q. Then you copied this information out of your mortgage file?

A. Sure. That's right.

Q. That's what I was after. So that we could go to your mortgage file and get the same kind of information on any of your mortgages in 1952?

A. Sure. Oh, yes.

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Re-direct Examination

By Mr. Van Zile:

Q. Now, Mr. DeYonker, one thing. You said, I believe, in answer to Mr. Dexter on Exhibits 101-A-1 through 10, that in the case of a paid-off mortgage, you wouldn't have any of this information.

Now, may I call your attention to Exhibit 101-A-1 (1120) Is that retained by your institution in your files as a part of your permanent records?

A. The ledger sheet is only one thing. The ledger sheet, of course, gives your FHA case number, it gives you the appraisal of the FHA, it gives you the terms of your mortgage, the type, and the monthly payment and the interest rate, and, of course, the name and the location of the property. (1121) These are permanent records. That is why we place all that on the one sheet. That is what we do keep, and we do have those ledger sheets which you can examine.

Q. In other words, that contains all the basic information, does it not?

A. That is right. The FHA cases, if there is any more information wanted, the appraisal can be obtained from the FHA.

A. And the balance of the description, as you said, you turned over to the mortgagor?

A. That is right.

Q. Upon payment. Now, cleaning up Exhibit 102-A-1, through 17, this information as to the mortgagor, mortgagee, the date of the mortgage, the recording date, the liber, the pages and the amount, all that appears upon the mortgage, does it not?

A. Well, it appears on the mortgage which is in the abstract, but—

Q. (Interposing): Does it not appear on the certified copy of the mortgage?

A. That is right.

Q. That is a part of the exhibit?

A. That is right, it does.

Q. The mortgagor's name, the amount, the mortgagee's name, right?

A. That is right.

Q. And that is true in the case of all of those. I mean, this information does appear upon the certified copies of the mortgages?

(1122) A. That is right.

Q. And of the discharge; is that right?

A. That is right.

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BURK, CLARE R., was thereupon called as a witness on behalf of the Plaintiff, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

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Q. . . . You are employed by the Michigan National Bank, Mr. Burk?

A. Yes, at the Battle Creek office.

Q. At the Battle Creek office?

A. Battle Creek office.

Q. And in what capacity?

A. Vice president.

Q. And what are your particular duties as a vice president?

A. Manager of the mortgage department.

Q. And how long have you held that position at the Battle Creek office?

A. I have been manager for five years, seven years. I have been (1123) in the department since 1946.

Q. And how long have you been employed by Michigan National Bank?

A. Thirty-one years.

Q. Thirty-one years?

A. Yes.

Q. That is by its predecessor, I assume?

A. Well, I beg your pardon. I started out with the City National Bank in 1927; then they changed their name to City National Bank and Trust Company. I do not know the date. And in 1938 it was changed to First National Bank, and in 1941 to the Michigan National Bank. Same bank all the way through.

Q. Just different names?

A. Just different names.

Q. And how long have you lived in Battle Creek?

A. Thirty years.

Q. Now, I believe you were present when Mr. DeYonker testified about the Flint office of the bank?

A. Yes.

Q. And you heard him describe the type of mortgages that his office was making in 1952?

A. I did.

Q. And in general terms a description of the terms of those mortgages, did you not?

A. Yes.

Q. Were there any differences so far as the types of mortgages were concerned and the method of loaning money on those (1124) mortgages in the Battle Creek office than in the Flint office? If so, would you explain them?

A. We made the FHA mortgages. We made GI mortgages, and we made conventional mortgages, and the general procedure was practically—I would say the same as the Flint office. Our requirements were the same.

Q. Now, you heard Mr. DeYonker testify as to the volume of mortgages which he was making in the Flint office. What volume of mortgages were you making and real estate mortgages were you making in the Battle Creek office?

A. In 1952 we made about, round figures, about 3 million a hundred thousand. A million six hundred thousand was FHA, a million four hundred thousand, round figures, was conventional, and about twenty thousand GI's, is all we made.

Q. And so far as the terms and the percentage to appraisal required on the down payment, etc., the amount of the loan and the down payment, and so forth, there were no essential differences in those various types from the Flint office?

A. Right.

Q. Now, I asked you to prepare also, Mr. Burk, samples of the mortgages from each quarter which Mr. DeYonker has testified to in the case of the Flint office. Did you do so?

A. Yes, I did.

Q. And I will show you Exhibit 101-B-1 through B-10 and ask you if those are of the same general nature as the exhibits (1125) previously testified to, only in the case of the Battle Creek office?

A. Yes.

Q. And you have, then, I note, four FHA mortgages, four regular mortgages, they each being from a different quarter of the year 1952?

A. Right.

Q. And two GI mortgages?

A. We only made three GI's that year of 1952.

Q. Now, in the case of your Exhibit 101-B-1, I do note that for the FHA mortgages you had a mortgage and a note for the first quarter, but you didn't have a copy of the mortgage and note for the other three quarters; is that correct?

A. That is correct.

Q. And why was that?

A. Well, I thought by making one full, complete record, that would give them an idea as to what we required for each application, because we require the same on every application.

Q. May I ask if the mortgage and note for the FHA varied during the balance of the year '52 or were the forms essentially the same?

A. The forms were essentially the same on FHA.

Q. And in the case of the regular or conventional mortgages, you have a mortgage and note for the first quarter but not for the other three?

(1126) A. Right.

Q. As to those three you have the application and ledger record; is that right?

A. Right.

Q. Does the same thing apply—I mean in the sense that the mortgage was essentially the same throughout the balance of the year in form?

A. It was.

Q. And the note?

A. Correct.

Q. And then you have one GI mortgage and note; is that correct?

A. Yes.

Q. And as to the other the application and ledger record?

A. I might make one comment, that our GI mortgages were made on the same form that we made our regulars. I think that was one thing that was different in the Flint office.

Q. In other words, you didn't make them on the government forms?

A. Right.

Q. Do you have the originals of those mortgage notes, applications and ledger records with you?

A. Yes, I do.

Q. They are here in court?

A. Right.

Q. Available for Mr. Dexter's inspection?

A. Yes.

Mr. Van Zile: We will offer Exhibits 101-B through B-10.

Mr. Dexter: Same objection, your Honor, as to 101-A-1 and 101-A-10, which were the same type of samples of mortgages introduced by Mr. DeYonker of the Flint office.

The Court: Received.

Q. (By Mr. Van Zile): May I ask whether those mortgages are representative of the other mortgages which you made of the various types during the year 1952, to your knowledge?

A. Yes.

Q. They are.

A. Best of my knowledge.

Q. Now, in the Battle Creek area what other associations, individuals or institutions are engaged in the loaning of money on real estate of the types included in our prior exhibit 101-B-1?

A. Security National Bank, Calhoun Federal Savings & Loan and People's Savings & Loan, formerly the Industrial Savings & Loan Association, Metropolitan Life Insurance Company, and the Equitable Life Insurance Company.

Q. Are there any other banks in Battle Creek?

A. No.

Q. And do the savings and loan associations in Battle Creek, (1128) and I am addressing myself to 1952, Mr. Burk, did they loan on all types of mortgages, FHA, VA and conventional, to your knowledge?

A. To the best of my knowledge, I know that the People's Savings & Loan, which was Industrial Savings & Loan in 1952, made all types of mortgages. Calhoun Federal Savings & Loan did not make FHA. If they did, it was a very, very few in that year.

Q. Now, I have asked you, as I asked Mr. DeYonker, to give us some examples of refinancing. Did you hear him testify as to what was meant by the term "refinancing"?

A. Yes.

Q. And does that agree with your understanding of it?

A. Yes.

Q. And did it occur in Battle Creek in connection with the savings and loan associations?

A. It did.

Q. I will show you what we have had marked as Exhibits 102-B-1 through 11 and ask you simply to identify what the various exhibits are by the name of the mortgagor, mortgagee.

A. This is a mortgage by the Calhoun Federal Savings and Loan to Herman F. Capelle and Hazel, husband and wife, on lot No. 6 of the Phelps addition to the City of Battle Creek, amount of \$2,000.

Q. And the date?

(1129) A. And the date is September 15, 1947.

Q. And that is a certified copy of that mortgage?

A. By the Register of Deeds of Calhoun County.

Q. And the next?

A. Discharge of mortgage by the Calhoun Federal Savings and Loan on the 20th day of February, 1952, which is a certified copy by the Register of Deeds of Calhoun County.

Next we have a mortgage from the National Bank to Raymond G. Johnson and to Ella M. Johnson for \$7,550, dated February 20, 1952, on lot No. 6 of the Phelps addition to Battle Creek.

Q. That is the same legal description as the prior mortgage?

A. Correct.

Q. And that is a certified mortgage, too?

A. That is a certified mortgage by the Register of Deeds.

Q. And 102-B-2?

A. That is a mortgage from the Industrial Savings & Loan Association, Battle Creek, to Fred M. Tessin, and Minnie C. Tessin. It is a very long—

Q. (Interposing): Don't go through—

A. It is a land and metes and bounds description. It is for \$2,300. That was made on July 3, 1950, and is a certified copy.

Q. We can say that these are all certified copies, are they not?

A. Right. Then we show a discharge of mortgage by the Industrial (1130) Savings and Loan dated the 17th day of March, 1952.

And our next exhibit is a mortgage by the Michigan National Bank to Frederick G. Askew and Kathleen E.

Askew, on the same legal description, dated March 17, 1952, in the amount of \$6,400.

Q. And 102-B-3?

A. Shows a mortgage from the Calhoun Federal Savings and Loan to Charles H. Van Syce and Martha M. Van Syce, on the 17th day of October, 1950. Legal description, Lot No. 41 in the south one-half of Lot No. 42 of the Chase.

I have a discharge of mortgage from the Calhoun Federal Savings & Loan Association dated—

Mr. Dexter (interposing): We can stipulate that those contain refinancings with savings and loan the same as the—

Mr. Van Zile (interposing): If we can do it, it would shorten things up a good deal, of course.

The Court: All right, state what you claim it contains, Mr. Van Zile.

Mr. Van Zile: All right, sir. Exhibit 102-B-1 through 11 contains refinancings of the same sort as 102-A-1 in the case of the Flint office. They contain certified copies of the mortgages and the discharges involved in each case.

Q. (By Mr. Van Zile): I think in three cases, Mr. Burk, they (1131) contain pictures, do they not, of the properties in question?

A. Right.

Q. Those being pictures which you say are representative of the property as it was in 1952?

A. Right. I know the property.

Q. You know the property in those cases?

A. Yes. And I have rechecked the property again about two weeks ago.

Q. Are there cases where there is a refinancing by the savings and loan from Michigan National Bank?

A. Right.

Mr. Van Zile: I will offer Exhibits 102-B-1 to 11.

Mr. Dexter: Same objection as to 102-A through 102-A-20.

The Court: The exhibits are received.

Q. (By Mr. Van Zile): Now, you made the statement as to the amount of your mortgages in 1952, Mr. Burk?

A. Yes.

Q. And what type of mortgage were you talking about in terms of residential or commercial? Were those your total mortgages?

A. One million four was the total of the conventional and commercial. I would say commercial would run in the neighborhood of around \$350,000. Very small compared to—

Q. (Interposing): In other words, 350 thousand of your total (1132) mortgages in '52 were on commercial properties?

A. On commercial properties.

Q. And the balance on residential?

A. The balance on residential, correct.

Q. I asked you about Exhibit 101-B-1 through 101-B-10, and you said they were representative. How about the interest rates? Were they spelled out in the various mortgages or papers? Are they generally representative of the interest rates which you charged on those various types of mortgages in 1952?

A. We charged 5% on some, 5½% on some, and 6% on some.

Q. On what type of mortgage?

A. On residential and conventional.

Q. On the conventional—

A. (Interposing): Conventional was all five, five and a half, and six.

Q. And, of course, the VA and FHA interest rate was—

A. (Interposing): The VA was four per cent, and the FHA four and a quarter per cent.

Q. Do you know, Mr. Burk, what the average term of your conventional mortgages was in 1952?

A. The average would run about eight and a half years.

Q. And what was the average term of your FHA mortgages, if you know?

A. I do not know, except I took an average, an average payoff at that time around about ten years.

Q. Average payoff?

(1133) A. Yes. I can't tell you what the average age was. We made most of our mortgages 20 years. We made a few 15 years, not very many, but most of our mortgages at that time were 20-year.

Q. By payoff I understand you are talking about the same thing Mr. DeYonker was. I mean they normally turn over and—

A. (Interposing): Turn over faster than what the 30-day shows.

Q. And your VA mortgage, what was the term, if you remember, the average term in 1952?

A. About fifteen years.

Q. What was the ratio of the loan appraised value, if you recall, in the case of the three types in 1952?

A. We could loan up to one hundred per cent on VA.

Q. Do you remember what you loaned in practice, if there was a practice?

A. We only had three. One of them was a very small percentage, and the others were about—I think it would run about 95, 96 per cent.

Q. There wasn't much practice there.

A. There wasn't much practice there.

Q. And how about the FHA?

A. On the FHA we could loan 90% on the first seven and 85% on the next three thousand. And then on the next three thousand it was—let's say 24 hundred, plus sixty per cent of the next three. So on up the scale. We loaned according to that schedule, unless the people had more money than what the (1134) down payment should be.

Q. And how about your conventional?

A. We loaned all the way from 50% to 60%.

Cross Examination

By Mr. Dexter:

Q. I have one question, and that is you deal mostly with builders on your mortgages?

A. No, we deal with all types of individuals and builders:

Q. The builders bring in a substantial amount of the business in 1952?

A. I would say that the real estate men bring in substantial business to us. That is where our business comes from.

BARNES, EDWIN, was thereupon called as a witness on behalf of the Plaintiff, and, having been duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Mr. Barnes, you are employed by Michigan National Bank?

(1135) A. That is correct.

Q. In what capacity?

A. As vice president in charge of mortgage loans in the Grand Rapids office.

Q. And how long have you held that position with Michigan National Bank?

A. In Grand Rapids since 1946.

Q. And where were you employed and by whom prior to that?

A. City National Bank in Battle Creek, the First National Bank in Battle Creek, and Michigan National Bank thereafter.

Q. And how long have you been in the banking business?

A. Since 1935.

Q. Now, the Grand Rapids office of Michigan National Bank does its mortgage loan business principally in what area?

A. Kent and the surrounding counties, Ottawa, Mecosta, surrounding counties.

Q. And is there any concentration of activity particularly in the Grand Rapids area?

A. Concentration is in the Grand Rapids area.

Q. You have heard Mr. DeYonker testify from the Flint office as to the types of mortgages which they

made in that area. Did you make the same types of mortgages in your area?

A. Yes.

Q. Did you follow substantially the same procedure as Mr. DeYonker did in the Flint office?

(1136) A. We did, with the exception of VA loans. I believe we were requiring in the Grand Rapids area a 10% down payment. We did not make any hundred per cent VA loans.

Q. You did make, however, all types of loans?

A. We made all types.

Q. Now, I also asked you to select mortgages from the various four quarters of 1952 of the various types, and did you do so?

A. Yes,

Q. And I will show you Exhibit 101-C-1 through 101-C-9 and ask you if those exhibits comprise that sampling?

A. Yes, they do.

Q. And we have what in that exhibit? Do we have four conventionals, one from each quarter?

A. No. I believe we have four FHA's. I believe there are three conventionals and a GI.

Q. And where you have not got a mortgage of a certain type, it indicates you did not make that type of a mortgage in that quarter; is that correct?

A. No, that is not correct. It means that we may have made mortgages in that quarter, but they were no longer active on our books. They had been paid.

Q. Now, do we have the same general setup as Mr. Burk? I mean, a mortgage and note and application and ledger sheet for the first quarter and then simply the application and ledger sheet for the other three

quarters—or the other quarters— (1136-A) or do we have the complete set as in the case of Mr. DeYonker?

A. I believe we have the complete set.

Q. So that your exhibit is substantially in the same form as Mr. DeYonker's?

A. That is correct.

(1137) Q. And would you say that these mortgages are representative as to form of the type of mortgages you were making in 1952 on residential properties?

A. Yes.

Mr. Van Zile: I will offer Exhibits 101-C-1 through 9.

Mr. Dexter: Same objection, your Honor, as 101-A-1 through 101-A-10.

The Court: Received.

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Q. (By Mr. Van Zile, continuing): Now, do you make mortgage loans in the Grand Rapids area on any particular type of residences, Mr. Barnes?

A. No, we make them on any residence that will qualify. In explaining that, loan the value.

Q. I see, and what do you mean by "loan the value"?

A. Where it does not exceed 60 per cent of the appraised value, on a conventional loan, nor does it exceed the amount on an FHA or VA loan.

Q. Other than that, you mortgage on all types of property?

A. That is correct.

(1138) Q. Do you know what your volume of mortgage loans on residential properties was in the year 1952?

A. Just under five million dollars.

Q. On residential?

A. On residential.

Q. I see. And do you know what percentage that was of your total loans?

A. I believe our total loans in 1952 were about five and one-half million.

Q. And by "loans" I am talking about mortgage loans, of course, real estate mortgage loans?

A. That is correct.

Q. Now, in the Grand Rapids area, what other institutions or associations or individuals loaned money on the security of real estate mortgages on residential property?

A. The Old Kent Bank, Peoples Bank, Central Bank, the Union Bank, Grand Rapids Mutual Federal Savings & Loan, Mutual Home, West Side Federal Savings & Loan, the insurance companies represented by certain mortgage brokers.

Q. And did you during the year 1952 have occasion to refinance properties on which the Savings and Loan Associations had mortgages, and did the refinance in cases where you had mortgages?

A. Yes, both on residential and commercial.

Q: I see. Both on residential and commercial?

Q. In Grand Rapids?

(1139) A. Correct.

Q. Now. I will show you Exhibits 102-C-1 through

8. You heard the other gentlemen talk about refinancing; is the the same sort of exhibit?

A. Yes.

Q. Would you describe 102-C-1 through 8, by identifying the mortgagor and the original mortgage?

Mr. Dexter: Again, if it is the same as the others—

Mr. Van Zile: It is.

Mr. Dexter: There is no reason to go through it, I do not believe.

(Thereupon three separate documents were marked for identification by the reporter as Plaintiff's Exhibit 102-C-10.)

Mr. Van Zile: I would also like to offer separately Exhibit 102-C-10; and would you explain what that is, since it is not a part of this bound volume?

A. It is a certified copy of the Register of Deeds of the mortgage extended by the bank to the Stiles Company, in the amount of \$60,000 covering—do you want the description?

Q. Just enough of it to identify it.

((40) A. The south 30.67 feet of Lots 10 and 23, all of Lots 11, 12, 13, 24, 25, and 26, and the north 64 feet of Lots 27, 28, 29, 30, 31, and 32, of Block 4, Weston & Meigs Third Addition, together with that portion of the vacated alleys adjoining said described property.

Q. Are you familiar with that property, Mr. Barnes?

A. Yes.

Q. What is that property in Grand Rapids?

A. That is a supermarket building which is leased to Meyer Super Market.

Q. So that your bank had a mortgage on that property originally, is that right?

A. That is correct.

Q. And the next document is what?

A. It is a certified copy by the Register of Deeds of a discharge by the Michigan National Bank of our mortgage, such discharge being dated the 18th day of January, 1950.

Q. And that is the mortgage we first described, is that right?

A. That is correct.

Q. And what is the last paper?

A. It is a certified copy of a mortgage by the Register of Deeds running to the Mutual Home Federal Savings & Loan Association of Grand Rapids, covering the same described property, dated the 17th day of January, 1950, in the amount of \$62,500.

Q. I see. Thank you. Now, you say there are other commercial (1141) mortgages in here which were taken over by the Savings & Loan Associations in Grand Rapids?

A. I believe the examples are where we have taken them from Savings and Loan Associations.

Q. I see, but they originally held them?

A. They originally held them.

Q. I see. We will offer Exhibits 102-C-1 through 10.

Mr. Dexter: . . . There is no objection to 102-C-10. No objection to 101-C-1 through 8, except—that is not the one— 102-A-1 through 17. We do not object to the proof of the particular transaction that they indicate.

The Court: They may be received.

Q. (By Mr. Van Zile, continuing): Now, Mr. Barnes, in the case of these mortgages we have been speaking of as represented and typified by Exhibits 101-C-1, et cetera, were these mortgages which you were making in 1952 to secure a past due indebtedness in any case, or were they (1142) for new funds?

A. In most instances, for new funds.

Q. Most of them were for new funds, not to secure a past due indebtedness?

A. No.

Q. And were the mortgages which you have been describing amortized on a monthly basis, that is, payable on monthly installments.

A. They were.

• • • • •

Mr. Van Zile: I forgot to ask one question of the preceding witness, if I might ask the one question.

Mr. DeYonker, I forgot to ask you whether any of these mortgage loans which you discussed were made to secure a pre-existing indebtedness to your bank, or were they for new funds.

Mr. DeYonker: They were made in part for new funds.

Mr. Van Zile: I see. They were not to secure pre-existing indebtedness?

Mr. DeYonker: Not with us, no.

Mr. Van Zile: May I ask Mr. Burk • • • (1143) the same question. Is the same thing true in the Battle Creek office?

Mr. Burk: I would say yes, they were for new funds.

Mr. Van Zile: They had no indebtedness to you prior to getting the mortgage loan?

Mr. Burk: No. You mean on those that we re-financed?

Mr. Van Zile: Yes.

Mr. Burk: No.

Mr. Klein: Other mortgages too.

Mr. Van Zile: Yes.

Mr. Klein: We are talking about all your mortgages.

Mr. Burk: Sometimes you refinance a mortgage of your own.

Mr. Van Zile: I understand that, but there was no pre-existing indebtedness?

Mr. Burk: No.

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(1147)

Lansing, Michigan,
Wednesday, July 16, 1958,
9:00 o'clock A. M.

NELLIGAN, JOHN B., was thereupon called as a witness on behalf of the Plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Mr. Nelligan, you are employed by the Michigan National Bank?

A. Yes.

Q. And what is your official title?

A. Vice president.

Q. And what are your duties?

A. I am in charge of various loan functions, including mortgage loans.

Q. And in what office of the Michigan National Bank?

A. At Lansing.

Q. Lansing, Michigan. Now, directing ourselves to the year (1148) 1952, was specifically to real estate mortgage loans, what was the area in which the Lansing office of Michigan National Bank loaned its money on the security of real estate mortgages?

A. Ingham, Clinton and Eaton counties, with the great preponderance in Ingham.

Q. And did you make loans on the security of real estate mortgages on residential properties in those counties?

A. Yes.

Q. And what was the amount of your residential mortgages in 1952, if you recall?

A. The loans made in that year were about a little less than three million dollars, two million something, as I remember.

Q. That is on residential properties?

A. That is residential.

Q. And what were your total loans, if you recall?

A. About four million four.

Q. And do you remember the number of loans that you made during that year?

A. Three hundred and forty or fifty.

Q. That is total loans of all types?

A. That is correct.

Q. And what number of those loans were on residential properties, if you recall?

(1149) A. About three hundred and twenty-five or thirty.

Q. Now, were you present in court when Mr. DeYonker of the Flint office testified?

A. Yes, I was.

Q. And you heard his testimony as to the manner and practice of their office in making these various types of real estate mortgage loans?

A. Yes.

Q. And did the practice in your office, in the form of your mortgages, differ in any substantial way from the Flint office?

A. No, it was generally comparable all the way through.

Q. I see. Now, I have asked you to prepare, as I did with Mr. DeYonker, an exhibit showing the various types of mortgages which you made during the year 1952 by quarters; have you done so?

A. Yes.

Q. I will show you a bound volume which is entitled, "Lansing Office, Samples of Mortgages, 1952,"

Exhibits 101-D-1 through 101-D-11. Is that a set of exhibits you prepared in that connection?

A. Yes, we had these samples pulled for each quarter, and they run from 1 to 11.

Q. How were they selected?

A. There was one selected from each quarter. There were four (1150) in a row here, one of each quarter of the year, FHA, and then four, five that are conventional selected in a similar manner, and two GI.

Q. Were they selected at random, or what?

A. At random.

Q. You have examined those, have you not?

A. Yes.

Q. And would you say that they were representative of the other mortgages which you made during 1952 in the quarter involved?

A. Yes, they are.

Q. Now, speaking of terms of your mortgages and your regular or conventional real estate mortgages on residential properties, what was the average or usual term of those mortgages?

A. On conventional mortgages, you mean?

Q. Yes.

A. Usually ten years.

Q. And how were they amortized?

A. On a monthly basis.

Q. At what rate, if you recall?

A. You mean interest rate?

Q. Yes.

A. The interest rate usually is five at that time on a conventional mortgage.

Q. And what was the percentage of the loan to the appraised value generally?

(1151) A. It had to be under sixty per cent but was very close to that figure.

Q. Now, in connection with the FHA mortgages, what was the interest there?

A. The interest rate there that year was four and a quarter.

Q. And what was the usual term of that type mortgage in the Lansing office?

A. Practically all of ours were twenty years.

Q. And what was the percentage of loan to appraised value?

A. It would run roughly from eighty to ninety per cent.

Q. You heard Mr. DeYonker testify about the schedule of percentage of loan to appraised value that was permissible for FHA mortgages?

A. Yes, I did.

Q. Did you follow that schedule, generally speaking?

A. Yes. We might have been a few per cent less than that. We didn't go to the extreme limit on each case.

Q. And your VA mortgages, the interest rate was four per cent?

A. Four per cent.

Q. And what was the average term?

A. Both GI's, the only two we made that year, were 20-year.

Q. And what was the percentage of the loan to the appraised value in those cases usually?

A. Ours usually ran a little less than ninety per cent—ninety-five per cent. I would say about ninety to ninety-five (1152) per cent.

Mr. Van Zile: I would like to offer Plaintiff's Exhibits 101-D-1 through 101-D-11.

Mr. Dexter: No objection except the same as Exhibits 101-A-1 through 101-A-10.

The Court: Received.

Q. (By Mr. Van Zile): Were the mortgage loans which you made on residential properties made to secure a pre-existing indebtedness, or were they for new funds?

A. No. Well, there might be a few exceptions, but there wouldn't be more than one or two cases in the year. Most of them were for new funds?

Q. Did you loan money in the Lansing area on any particular class of property?

A. No.

Q. On what classes of property did you loan money?

A. All classes.

Q. And did you loan to any particular class of mortgagor?

A. No. It was the run of the mine, as they came.

Q. Did you ever make conventional mortgage loans on properties which did not qualify for an FHA mortgage?

A. Yes, we have.

Q. Now, what other institutions, firms or individuals were loaning money on the security of residential real estate in the Lansing area?

(1153) A. American State Bank, the Bank of Lansing, East Lansing State Bank, the Union Building & Loan, the Lansing Savings & Loan, the Capitol Savings & Loan, East Lansing Savings & Loan.

Q. Were they lending money in that fashion on the same types of property and the same classes of mortgagor?

A. Very much the same.

Q. Did you during 1952 refinance mortgages held by one of the savings and loan associations, and did they in turn refinance mortgages on properties which you held a mortgage on?

A. Yes. There are always a certain number.

Q. I have asked you to prepare an exhibit showing such refinancings. Have you done so?

A. Yes.

Q. I will show you what has been marked Lansing Office, Michigan National Bank Exhibits 102-D-1 through 12, refinancings, and marked in that fashion. Is that the bound volume showing such refinancings?

A. Yes, it is.

Q. Would you explain to the Court or identify the refinancings involved in that set of exhibits, Mr. Nelligan?

A. Well, we searched through our records and we found that from the original transcript of the mortgages recorded in Ingham County in that year, we had a number of examples of mortgages that were given to—for instance, the first one was (1154) given by Mid-State Builders to the Union Building & Loan, and at a later date discharged, and remortgaged to the Michigan National Bank.

Q. Now, what was the date of that mortgage to Mid-State Builders?

A. The date of this mortgage was June 12, 1952.

Q. And what amount?

A. \$6,000.

Q. And you refinanced that mortgage when?

A. On November 8, 1952.

Q. In what amount?

A. \$9,400.

Q. And was that on the same property?

A. It is on the same property, lot 10 of Prairie Village.

Q. Do you know who Mid-State Builders, Incorporated, is?

A. Yes.

Q. What are they?

A. They are a concern who do building around town, residential building.

Q. And the mortgage was to that concern?

A. Yes, sir.

Q. And you have copies in each instance of the mortgage and discharge?

A. That is correct; these are certified copies.

Q. And what is your second example?

A. The second example is Clark Ackley and wife, who gave a (1155) mortgage to East Lansing Building & Loan—

Q. Just, if you will, hurriedly tell us the original mortgagor and mortgagee?

A. The second is Clark Ackley and wife, who made a mortgage to the East Lansing Building & Loan on May 16, 1947, in the amount of \$18,000, and a mortgage was made to the Michigan National Bank on February 6, 1952, in the amount of \$15,000.

Q. By whom?

A. By Clark Ackley and wife, the same parties.

Q. Third?

A. The third one is Straffin, who gave a mortgage in 1948 to the Michigan National Bank, and it was discharged in March of 1952, and sold, apparently, to MacLeod, who, in turn, mortgaged it to the East Lansing Savings & Loan. The first mortgage was \$9,600, and the second mortgage \$10,000.

(1156) Q. And the fourth?

A. Mid-State Builders, who gave a mortgage on March 19, 1952 to the Union Bulding & Loan, in the amount of \$6,000, and re-mortgaged to the Michigan National Bank for \$9,400 in September, 1952, by the purchaser, Mr. Merwin.

Q. And the fifth?

A. The fifth is a mortgage to the Mid-State Builders, given by Mid-State Builders to the Union Building & Loan in March of 1952 for \$6,000, and sold to Easterbrook and wife, who mortgaged to Michigan National Bank in October, or, September 29, 1952, for \$8,100. Do you want me to go on?

Q. Yes, if you will.

A. The sixth is Carr and wife, who gave a mortgage in June of 1950 to the Michigan National Bank for \$8,600, on FHA. It was later sold to Stockton and wife, who gave a mortgage to the East Lansing Building & Loan in January, 1952, for \$9,250.

The seventh is Seeds and wife, who gave a mortgage in 1951 to the Capitol Savings & Loan in the amount of \$5,000. It was sold to Zindler and wife, who, in turn, in July of 1952, gave a mortgage to the Michigan National Bank for \$8,500.

The eighth is Lewis and wife, who gave a mortgage in 1951 to the Michigan National Bank for \$3,000 on FHA; in turn, it was sold to McCanna and wife in January, (1157) 1953. The mortgage was for \$5,000 to the Capitol Savings & Loan.

The ninth is Hakes and wife, who, in 1946 gave a mortgage of \$600 to the Michigan National Bank, and it was discharged in March, 1952, and re-mortgaged in 1956 to the Union Building & Loan for \$3,500.

The tenth is Barndt and wife, to the East Lansing Savings & Loan, in March of 1947, a loan of \$4,500. It was sold to Schmidt and wife, who, in turn, gave a mortgage in 1952 to the Michigan National Bank for \$2,500.

The eleventh is Pastras and wife, who mortgaged to the Michigan National Bank in May of 1950, in the amount of \$8,500 on FHA. It was discharged January

30, 1952. In turn, they gave a mortgage in November of 1952 to the Capitol Savings & Loan for \$11,000.

The twelfth is Claus and wife, who in 1950 gave a mortgage to the Capitol Savings & Loan for \$6,000, on FHA, for twenty-five years. In November of 1952 it apparently was purchased by Sundeen and wife, who mortgaged to the Michigan National Bank for \$7,500, FHA.

Mr. Van Zile: I think there is one mortgage in there that is dated after 1952, and I offer the Exhibits 102-B-1 through 12, with the exception of that one subsequent to 1952. As to that, I request that it be made a part of the separate record.

(1158) Mr. Dexter: The summary sheets are just a matter of convenience in front of it; that is not a part of the exhibit?

Mr. Van Zile: That is not a part of the exhibit.

Mr. Dexter: No objection.

The Court: It may be received on the conditions stated by Mr. Van Zile.

Q. (By Mr. Van Zile): One other thing. In explaining Exhibit 102-D-1 through 12, I notice you have on the side of each mortgage in ink page 246, line 45, for instance, on Exhibit 102-D-1, and you have like notations as you go along. What is the reason?

A. That is the page and line of the large transcript that we made up of all of the transactions for 1952 recordings.

Q. Exhibit 65?

A. That is correct. I understood it was that number.

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Cross Examination

By Mr. Dexter:

Q. With reference to the FHA mortgages, was there any additional charge other than the four and a quarter per cent interest rate?

A. Well, there was a charge for the FHA appraisal fee which went to the FHA.

(1159) Q. Were there any additional charges other than that?

A. At that time there were no other additional charges that I remember. There was a charge for construction, a fee for construction, but not for a loan.

Q. Was there an insurance charge?

A. Oh, yes.

Q. That would be part of the money required to be paid regularly by the purchaser?

A. That is correct, a half of one per cent insurance charge.

Q. That would be true for all FHA mortgages in 1952?

A. That is correct.

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Re-direct Examination

By Mr. Van Zile:

Q. Would you explain just very briefly that insurance fund payment?

A. Well, the borrower is required to pay a half of one per cent, which added to the four and a quarter makes the total cost for the mortgage four and three-quarters. That fee is remitted by us to the Federal Housing Administration as an insurance fee for insuring and guaranteeing the loan.

Q. And what happens to that fund that is so established?

A. It is built up as an insurance fund.

(1160) Q. Is it ever returned to the mortgagor?

A. I understand under part of the statutes it can be returned, but it hasn't been so far.

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TOLHURST, LEON G., was thereupon called as a witness on behalf of the Plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Your name?

A. Leon G. Tolhurst.

Q. Mr. Tolhurst, you are employed by the Michigan National Bank?

A. I am.

Q. In what capacity?

A. Vice-President.

Q. And what are your duties?

A. Among other duties, responsible for the mortgage loans in the Marshall office.

Q. In the Marshall office?

A. That is right.

Q. And how long have you held that position?

(1161) A. Since 1941.

Q. And where were you previously employed?

A. At the Hastings Marshall Bank.

Q. Now, Mr. Tolhurst, how large a community is Marshall, Michigan?

A. Approximately 6,000. The directory prepared by B. L. Polk lists 5,770.

Q. And what sort of a community is Marshall?

A. It is a county seat, center of farming industry, and we have considerable other manufacturing industries also.

Q. Is it primarily a farming community, though?

A. I wouldn't say primarily. I would say a substantial portion of it is farming community.

Q. Now, does your office loan money on the security of real estate mortgages on residential properties?

A. We do.

Q. And I am directing my questions to 1952, Mr. Tolhurst. In what area did you loan money in that fashion in 1952?

A. In Calhoun County, a few loans were made in Olivet, which is over in Eaton County, and we have mortgage loans, a limited number, in Coldwater, which is in Branch County, but, however, in 1952 I do not think we had any.

Q. Now, what was the volume of your mortgage loans on residential properties, if you recall it, in 1952?

A. Well, I did not segregate those because the so-called (1162) conventional mortgages, there might be a few farm mortgages. We make farm mortgages. The farm mortgages in number and volume are much less than the residential.

Q. Well, including the farm mortgages with your residential mortgages, do you recall what your volume was in 1952?

A. FHA mortgages, there were thirty, for a volume of \$224,000. Conventional mortgages, I believe there were 51, and the volume, \$226,000.

Q. Did you make any VA mortgages?

A. We made one.

Q. And did you make any commercial mortgages?

A. We had three.

Q. What was the amount of your commercial mortgages, if you recall it?

A. \$30,000, I believe.

Q. Now, you heard Mr. DeYonker of the Flint office testify previously, did you not, as to the practice of his office in making mortgages of various types, and the procedures followed?

A. I did.

Q. And was your practice at the Marshall office substantially the same as his?

A. It was.

Q. Speaking of terms, you made all three types of mortgages on residential properties, right?

A. That's right.

(1163) Q. As to the conventional mortgages, what was the average term or generally the term of your conventional mortgages on residential properties?

A. Ten years or less.

Q. And what was the usual interest rate?

A. There were a few at five per cent. More of the smaller mortgages were at six per cent.

Q. And what was the percentage of the loan to the appraised value usually?

A. Sixty per cent or less.

Q. Now, the FHA mortgage, the interest rate was four and one-fourth per cent. What was the usual term of those mortgages?

A. Twenty years.

Q. And what was the percentage of the loan to the appraised value usually?

A. We made those approximately ninety per cent.

Q. And on your VA's, the interest rate was four per cent, right?

A. That's right.

Q. And what was the term of that one mortgage?

A. Eighteen years.

Q. And you have that VA mortgage, the only one, in our next exhibit, is that right, 101-E-1 through 8?

A. Yes.

Q. Now, did you also prepare, as the others have, a sample of your mortgages made during 1952, Mr. Tolhurst?

(1164) I did.

Q. And I will show you Exhibit 101-E-1 through E-8, and ask you if that is the sampling which you prepared?

A. It is.

Q. And what do those exhibits comprise? I mean just in terms of the types of mortgages.

A. There were four FHA mortgages, one from each quarter. There were three conventional and one VA.

Q. Now, were those mortgages representative of the other mortgages which you made during the year?

A. They are in the size of the mortgage. Our office being in a smaller community, we make more mortgages of less than five thousand. I asked the secretary to select from each quarter mortgages of more than five thousand. She came up with one by which the terms of payment were to pay semi-annually, which is an exception.

Q. That is not usual?

A. Not usual. For residential property that is not usual.

Q. How are your mortgages on residential properties usually amortized?

A. They are usually amortized monthly.

Q. But one of these is amortized semi-annually?

A. That's right.

Q. Now, on what classes of property did you loan money in Marshall on residential properties?

(1165) A. All classes.

Q. And to what class of people?

A. All classes of people in the community.

Q. What other people were loaning money on the security of residential properties—real estate mortgages on residential properties in Marshall in 1952?

A. Marshall Savings and Loan Association and some individuals.

Mr. Van Zile: I would like to offer 101-E-1 through 101-E-8.

Mr. Dexter: No objection except that as to 101-A-1 through 101-A-10.

The Court: Received.

Q. (By Mr. Van Zile): Were there any refinancings as between your bank and Marshall Savings & Loan in 1952?

A. We found one instance.

Q. I will show you what has been marked Exhibits 102-E-1 through 18. Is that refinancing contained in those exhibits?

A. It is.

Q. And would you identify that one resident? What is the number of that exhibit first, Mr. Tolhurst?

A. It would be 102-E-1.

Q. It has already been marked. What are those papers?

A. This is a mortgage dated January 26, 1952, William Waidlech and Mrs. Waidlech, for \$7,000.

Q. And who is the mortgagee?

(1166) A. Marshall Savings & Loan Association.

Q. What is the next exhibit?

A. The next exhibit is a mortgage that was made by the same parties, dated March 17, 1947, to the Michigan

National Bank, in the amount of \$6,900. That was a VA mortgage.

Q. Both of those are certified copies, are they not?

A. They are.

Q. So that indicates that that mortgage was a mortgage which you held which was refinanced by Marshall Savings & Loan?

A. It was.

Q. And that was the only one you could find in 19—

A. (Interposing): That was the only one I could find in that year.

Mr. Van Zile: I would like to offer Exhibit 102-A-1.

Mr. Dexter: No objection.

Q. Now, I have also asked you, Mr. Tolhurst, to assemble mortgages made in 1952 by your bank and by the Marshall Savings & Loan Association showing the types of properties on which you were loaning. Have you done that?

A. I have.

Q. And how have you arranged those in Exhibits 102-E-2 through 18? Would you explain that? First explain it generally. What have you done?

A. I have arranged the first one by one loan made by one (1167) institution, giving a picture of the property, and then—

Q. (Interposing): Certified copy of the mortgage?

A. Certified copy of the mortgage. Then perhaps a picture of another property close to it or of a similar nature made either by the Michigan National Bank or the Marshall Savings & Loan Association.

Q. Well, now, would you take those up and explain as briefly as you can, first of all, the pictures were taken by whom?

A. I took the pictures.

Q. And when did you take the pictures?

A. Recently, within two months.

Q. Have you been familiar with the properties in the past?

A. I have been, and I am. I was at the time and still am familiar with it.

Q. Do the pictures substantially represent the houses as they were in 1952 of your own knowledge?

A. They do.

Q. All right, would you briefly explain the exhibits, and as you go along would you identify the exhibits?

Mr. Dexter: Your Honor, I believe that the testimony has been very clear that they loan on all types of properties, residential, and I think the Savings and Loan testimony was that, and we will agree that that happened. It seems to me that this at best is cumulative and detail that is subject to some evidentiary objections.

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(1168) Q. (By Mr. Van Zile): Would you identify those exhibits and state the basis of comparison or whatever reason there may be for having assembled the particular exhibit?

A. The first one represents a mortgage loan of \$4,000 given by Homer E. Devenney and Mrs. Devenney, Marshall Savings & Loan Association. This property is located just outside the city limits, north city limits, of Marshall, North Marshall Avenue. The certified mortgage is dated May 24, 1952.

Q. And those are Plaintiff's Exhibits 102A-2, is that right?

A. That is right. The next one is a loan made by the Michigan National Bank, Stanley Schmanske and Mrs. Schmanske, in the amount of \$3,000. This prop-

erty is probably three or four blocks from the previous one.

Q. From the previous exhibit, and that is Exhibit 102-A-12, right?

A. Correct.

Q. And a certified copy of the mortgage?

A. The next one is a loan dated April 16, 1952, in the amount of \$3,800 given by Willie Faurot; and Mrs. Faurot, Marshall Savings & Loan Association, located 405 South Jefferson (1169) Avenue.

Q. And that is exhibit what? Will you state the exhibit number?

A. 102-E-3.

Q. Next?

A. The next is a loan dated February 26, 1952, given by Ivan D. Tenney in the amount of \$3,500 to the Michigan National Bank, and is located at 892 East Michigan Avenue.

Q. And is it near the property in the previous exhibit, or is there any connection?

A. It is not near. It is not far away, because the community is not large, but it shows the size of house. That was the purpose of that.

Q. All right, will you go on. That is Exhibit 102-E-13.

A. E-13, correct. The next exhibit represents a loan of \$5,000, dated November 7, 1952, made to Bernard L. Hopkins and Mrs. Hopkins, by the Marshall Savings & Loan Association. That represents one of the older houses.

Q. And what is the exhibit number?

A. 102-E-4.

Q. And what is the next exhibit?

A. The next exhibit is a loan dated May 17, 1952, given by J. Phillip Roberts and Mrs. Roberts in the

amount of \$4,000 to the Michigan National Bank. It is located at 315 North Madison Street. It is a sample of one of the older houses in Marshall, well preserved.

(1170) Q. And that is the reason why it connects up with the previous exhibit?

A. Correct.

Q. What is the next exhibit—what is the exhibit number of that?

A. 102-E-11.

Q. All right.

A. The next exhibit represents a mortgage dated October 17, 1952, in the amount of \$5,500 by Ray E. Waters and Mrs. Waters to the Marshall Savings & Loan Association. This is located at 808 West Michigan Avenue. This is primarily residential. However, on the same lot is located a body shop.

Q. And what is the number of that?

A. 102-E-9.

Q. What is your next exhibit?

A. The next exhibit is a loan dated June 14, 1952, in the amount of \$4,550 to Robert K. Howard and Mrs. Howard by the Michigan National Bank. This is located outside the city limits on west US-12. It represents the residence and adjacent to it is a motel.

Q. Does the mortgage cover the motel?

A. The mortgage does not cover all the motel.

Q. And what is the purpose of that exhibit?

A. To show that we make loans on a residence that has a business connection with it as well as the previous one which showed (1171) the residence having a body shop on the property.

Q. Which was by Marshall Savings?

A. That is right.

Q. Would you go on to the next exhibit?

A. You want the number of this exhibit?

Q. Yes, please.

A. 102-E-10. That is the Howard property.

The next one is a loan dated December 5, 1952, to Hugh M. Miller and Mrs. Miller in the amount of \$3,300 by the Marshall Savings & Loan Association, located at 120 West Spruce Street.

Q. And what is the number of that exhibit?

A. 102-E-6.

Q. And the next exhibit?

A. Is a loan dated December 2, 1952, by Vaughn L. Sink and Mrs. Sink, in the amount of \$5,500, by the Marshall Savings & Loan Association, located at 120 Hart Street.

Q. And what is the number of that?

A. That is 102-E-7.

Q. All right. And the next?

A. I might add at the present time we have a mortgage on that made subsequent to 1952.

Mr. Van Zile: May I ask that that be made a part of the separate record, that statement?

The Court: All right.

(1172) Q. (By Mr. Van Zile): Would you go ahead with the next exhibit?

A. This is a loan made October 11, 1952, by Douglas Dwayne Van Sickle and Mrs. Van Sickle, in the amount of \$2,200, by the Marshall Savings & Loan Association, located 842 East Green Street, Exhibit No. 102-E-8.

The next one, the loan is dated April 12, 1952, to Aldwin H. Ludy, in the amount of \$4,000, by the Marshall Savings & Loan Association. Her property is located perhaps a mile or a mile and a half outside the city limits of Marshall. Do you want the number of that exhibit?

Q. Yes, please.

A. 102-E-5.

The next is a loan dated February 15, 1952, to Charles H. and Mrs. Tidey, in the amount of \$8,000, by the Michigan National Bank, Marshall, Michigan.

Q. The number of the exhibit?

A. The number of the exhibit is 102-E-14.

Q. Where is that property located?

A. This is perhaps a mile and a half outside the city limits, not in the same direction as the other, but it illustrates that we both make loans on property outside the city limits.

Q. The next exhibit?

A. A loan dated December 22, 1952, to Raymond N. Weber and Mrs. Weber, in the amount of \$8,600, by the Michigan National (1173) Bank, located 211 East Drive, Marshall, Exhibit No. 102-E-15. This is an FHA loan.

The next loan is dated March 20, 1952, to William R. and Mrs. Youngdahl, \$12,500, Michigan National Bank, located 108 North Kalamazoo Avenue at the approximate intersection of US-12 and US-27.

Q. And is that an older house?

A. It is one of the older houses, well preserved, in good shape; Exhibit No. 102-E-16.

The next one is a loan dated April 12, 1952, to Benoit M. and Mrs. Singleton, in the amount of \$6,800, by the Marshall Savings & Loan Association. This property is located on the shores of Lyon Lake, approximately six miles south of Marshall, Exhibit No. 102-E-17.

The next loan, dated September 10, 1952, to George C. and Mrs. Walbeck; the amount was \$5,000 to Marshall Savings & Loan Association, at 427 North Mulberry Street. That is exhibit No. 102-E-18.

Mr. Van Zile: I will offer Exhibits 102-E-2 through 18.

Mr. Dexter: I understand it is still the understanding of the Court and plaintiff that we have a continuing

objection as to the materiality of anything in reference to the Building and Loan people.

The Court: I think that is the general statement.

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(1174) Q. (By Mr. Van Zile, continuing): State whether any of your mortgage loans on residential properties were to secure a pre-existing indebtedness?

A. They were not.

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BROWN, HARRY A., was thereupon called as a witness on behalf of the Plaintiff herein, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Mr. Brown, by whom are you employed?

A. I am employed by the Michigan National Bank, Port Huron office.

(1175) Q. And in what capacity?

A. I am vice-president in charge of the mortgage loan department.

Q. And how long have you held that position?

A. I have been in the mortgage loan department twenty years; I have been vice-president for the past five years. Prior to that time, I was assistant vice-president; and I started originally with the First National Bank of Port Huron, up until the time the bank was taken over by the Michigan National in 1941, I believe it was.

Q. And how long have you lived in Port Huron?

A. All my life, sir.

Q. And how large is Port Huron?

A. Port Huron is about 37,000 population.

Q. Now, do you make loans on the security of real estate mortgages on residential properties in Port Huron?

A. We do.

Q. In what area do you make such loans?

A. We make mortgage loans in St. Clair County chiefly, however we do make a few in Sanilac County and Huron County.

Q. Do you recall the volume of your mortgage business on residential properties in 1952?

A. Yes, I do. We made approximately \$2,700,000 worth of mortgage loans on residential properties in 1952, for a total of 470 loans.

Q. What were your total mortgage loans?

(1176) A. Total mortgage loans in 1952 were about three million two, so our commercial loans would be about five hundred thousand dollars, 27 loans I think were commercial.

Q. What types of mortgage loans did you make on residential properties, Mr. Brown?

A. We made residential loans on all types of property.

Q. And by "types," what I really meant, do you make the FHA type?

A. Yes, we make FHA, GI and conventional loans.

Q. All three types?

A. Yes.

Q. And that was true in 1952?

A. Yes.

Q. All my questions are directed to 1952?

A. I understand.

Q. Do you recall the distribution between those types of mortgages so far as your residential mortgages were concerned?

A. I would say about 70 per cent were conventionals, about 25 per cent were FHA, and about 5 per cent VA.

Q. Now, you heard Mr. DeYonker of the Flint office testify, did you not?

A. I did.

Q. Were your practices in making such loans substantially similar to his?

A. They were.

Q. And turning to the terms of these various types of mortgages (1177) on residential properties, what was the average term, usual term of your conventional mortgages?

A. Our conventional mortgages were generally ten year loans; we made a few under ten years, but the majority were ten year loans.

Q. And what were your interest rates in 1952?

A. Six per cent.

Q. And how were your loans amortized?

A. They were all amortized on a monthly payment basis.

Q. And at what percentage, if you recall?

A. You mean percentage of loan to value?

Q. No, I mean how did they amortize?

A. Oh, one per cent per month; in other words, on a \$10,000 loan our payment would be \$100 a month; it would take about eleven years, perhaps, to pay the loan off, but the maturity was set at ten years; it could be extended.

Q. Did you in fact extend in 1952, or prior thereto, on occasions?

A. We did on occasions.

(1178) Q. Now, what was the percentage of the loan to appraised value usually in the case of your conventionals?

A. We loaned 60% of the appraised value in most cases.

Q. And on your VA what was your usual term?

A. Well, VA loans were generally all 20-year loans.

Q. And the percentage of loan to appraised value, do you recall that?

A. We loaned at one hundred per cent of the appraised value. In the majority of cases I would say we required 10% down, a 90% loan.

Q. And on your FHA mortgages what was the usual terms?

A. FHA loans were 20-year loans. We could go 25, but we had about 20.

The Court: Before you leave that, it has been said here by this witness and some others that these mortgages could be extended. Is that just something that is in the mind of the banker, or is it something in these Federal statutes that says that they may renew or extend?

Mr. Van Zile: My understanding is that the law provides for what they call 40% amortization over the first ten-year period. In other words, it requires a payment down to 60% in ten years. If that is paid down or more, then they can extend on the same property for an additional period.

The Court: That is in the statute somewhere?

Mr. Van Zile: Yes, it is. That is my understanding. (1179) I don't know that the extension is, your Honor, but they are permitted to.

The Court: Who permits them? That is what I want to know. You kept saying that may be done. Is that something in the law that says that? They could issue a new mortgage. I realize that.

A. The law provides that.

Q. (By Mr. Van Zile): The law provides that, Mr. Brown?

The Court: It could be checked later as far as the express provisions are concerned.

Q. (By Mr. Van Zile): Now, on the FHA mortgages what was the percentage of the loan to appraised value usually?

A. We loaned as high as FHA would approve, generally 85% of the appraised value.

Q. And how were your loans amortized on residential properties? ~~On a~~ monthly basis?

A. They were all amortized on a monthly basis, yes, sir.

Q. Were any of them made to secure a pre-existing indebtedness?

A. No, sir.

Q. They were all for new funds?

A. They were all for new funds.

Q. And we have covered the area of your loaning, have we not?

A. Yes, sir.

Q. And to what classes of people in the Port Huron area did you loan money?

(1180) A. We made no distinction. We loaned to anyone who would come to our office and make application.

Q. And did you loan on any particular class of property?

A. No, providing the property was a residential property and in our loaning area.

Q. Have you made loans on types of property that did not qualify for FHA?

A. Yes, sir, we have. In some areas the FHA will not approve the area; therefore we would make conventional loans to those people.

Q. I have asked you as I did Mr. DeYonker and the other witnesses to prepare a sample of the mortgages which you made in 1952, Mr. Brown. Have you done so?

A. That I have done.

Q. Is this the volume containing Exhibits 101-F-1 through 101-F-12?

A. This is the volume, yes, sir.

Q. And just state briefly what that contains, will you please?

A. This contains an FHA mortgage made in 1952 for each of the quarters, for each quarter of the year, a VA loan made in each quarter of the year 1952, and a conventional loan made each quarter of 1952.

Q. Now, are these mortgages representative of the other mortgages which you were making during the year in the quarter from which they are selected?

A. Yes, sir, I would say they are. They are typical mortgages taken (1181) directly from our files.

Mr. Van Zile: I will offer 101-F-1 through 12.

Mr. Dexter: No objection except that made to 101-A through 101-A-10.

The Court: Received.

Q. (By Mr. Van Zile): What other institutions or persons loan money on the security of residential properties in the Port Huron area; Mr. Brown?

A. Peoples Savings Bank of Port Huron, Citizen's Federal Savings and Loan Association, individuals and insurance companies.

Q. That was true in 1952?

A. In 1952, yes.

Q. And have you on occasions refinanced mortgages held by Citizen's Federal Savings and Loan?

A. We have, sir.

Q. And did you do that in 1952?

A. In 1952 we did in many cases.

Q. And did they likewise refinance mortgages which you had?

A. Yes, sir.

Q. I will show you Exhibits 102-F-1 through 12 and ask you if they contain instances of such refinancing in 1952?

A. Yes, sir, this does, direct payoff by the Citizen's Federal Savings and Loan to Michigan National Bank, and vice versa, mortgages paid off by us to them.

(1182) Q. I see. Now, one thing that this exhibit differs in is that it contains pictures of the property and a view of the neighborhood, does it not?

A. It does, sir.

Q. In the case of each mortgage that was refinanced, is that correct?

A. Yes, sir.

Q. And where did you obtain those pictures?

A. These were taken directly from our files, sir, on mortgages that we had loaned in 1952.

Q. And do they show the situation of the property in 1952?

A. They do, sir. These pictures, the majority of them have been taken in 1952 that are in our files.

Q. Were these all of the refinancings or simply—

A. (Interposing): They weren't all of them. I would say they were samples that we picked at random where we paid them off and they paid us.

Q. What is Exhibit 102-F-4?

A. This is a mortgage that we made to Leslie C. Kleckler and wife on a home and motel located at 6027 Gratiot Turnpike, St. Clair.

Q. What is the amount of that mortgage?

A. The amount of the mortgage was \$3,000.

Q. Was that refinanced by—

A. (Interposing): We have a copy of the mortgage certified by (1183) the Register of Deeds, and then we have a discharge of our mortgage and a new mortgage copy certified by the Register of Deeds taken by the Citizens Federal Savings & Loan Association from the same borrower, Leslie C. Kleckler and wife. They took the mortgage August 6, 1952.

Q. And that was in what amount?

A. \$5,000.

Q. And did that include the motel?

A. That included the same property as described in the legal description.

Q. And the balance of the refinancing, I believe, involved residential properties; is that not true?

A. Yes, sir.

Mr. Van Zile: I will offer Exhibits 102-F-1 through 12.

Mr. Dexter: No objection except as to materiality.

The Court: Received.

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(1186) LIST, OSWALD M., was thereupon called as a witness on behalf of the Plaintiff herein, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Will you speak up, Mr. List, so Mr. Whitman can hear you, and all the rest of us?

A. Yes.

Q. You are employed by the Michigan National Bank, Mr. List?

A. Yes, I am.

Q. In what office?

A. Saginaw office.

Q. And what are your duties?

A. I am in charge of the real estate mortgage department, and vice-president.

Q. And how long have you held that position, Mr. List?

A. Since January, 1941.

Q. January, 1941?

A. That is right.

Q. And how long have you lived in Saginaw?

A. Since 1920.

Q. And what was your previous experience prior to 1941?

(1187) A. I worked for Saginaw State Bank and Saginaw National Bank from 1935. Prior to that I was employed by the Bank of Saginaw.

Q. Now, you make real estate mortgages on the security of residential properties from your office?

A. Yes, we do.

Q. And what is the area in which you engage in that activity?

A. Mostly Saginaw County, but a few in Midland County and Bay County.

Q. How large is Saginaw?

A. Saginaw city, approximately about 93,000.

Q. And do you recall in terms of dollars the amount of your residential mortgages in 1952?

A. About \$2,200,000.

Q. And what was your total mortgages?

A. About \$3,000,000.

Q. And do you remember the number of residential mortgages which you made in 1952?

A. Approximately about 350.

Q. And what were the total number of your mortgages?

A. Approximately about 380.

Q. And on your residential properties did you make all types of mortgage loans, VA, FHA, and conventional?

A. Yes, we did.

Q. Do you remember approximately what the number of FHA mortgages (1188) was?

A. Approximately about 56, and about 11 VA.

Q. And the balance were conventionals?

A. Of the 350.

Q. The balance were conventionals?

A. Yes.

Q. Now, you heard Mr. DeYonker testify, did you not?

A. Yes, I did.

Q. Were your practices loaning money on the various types of mortgages substantially different in the Saginaw area than his in Flint?

A. No, they were not.

Q. And I have asked you to prepare, as I did with the other offices, samples of the mortgages which you made in 1952.

I will show you Exhibit 101-G-1 through 101-G-12, and ask you if that is the set of such mortgages?

A. Those are samples of the mortgages you asked me to prepare; four FHA, four VA, and four conventionals, one for each quarter, one of each for each quarter.

Q. How were these mortgages selected?

A. They were selected by myself at random.

Q. You have examined them?

A. Yes, I have.

Q. Do you feel that they are representative of the other types of mortgages you were making in 1952 or the quarter involved?

(1189) A. Yes, they are.

Mr. Van Zile: I will offer Exhibit 101-G-1 through 101-G-12.

Mr. Dexter: No objection, except the continuing one as those in reference to 101-A-1 through 101-A-10.

The Court: Received.

Q. Now, turning to the terms of these various types of mortgages, taking up first your conventional mortgages on residential properties, what was the usual term of your loans on those properties?

A. Ten years.

Q. And what was your rate of interest in 1952?

A. Mostly five per cent.

Q. And what was the percentage of the loan to appraised value?

A. Sixty per cent of valuation.

Q. And your FHA mortgages, the interest was, of course, four and a quarter per cent; what was your usual term?

A. Twenty years, with maybe a few twenty-five?

Q. And what was the percentage of these loans to appraised value?

A. We made the FHA loans at whatever FHA would permit.

Q. And on your VA loans the interest, of course, was four per cent; what was the usual term?

A. Twenty years, with the exception of, as I recall it, I think there were two at fifteen.

(1190) Q. And what was the percentage of the loan to the appraised value, usually?

A. I would say about 85 to 90 per cent.

Q. Now, were all of these residential loans in 1952 amortized on a monthly basis?

A. Yes, they were.

Q. Were any of them made to secure a pre-existing indebtedness?

A. No.

Q. Did you loan on any particular type of residence?

A. I don't think I quite understand.

Q. Well, I mean, for instance, did you loan only on homes that cost more than \$20,000?

A. No, we loaned on any residence as long as the applicant and the property qualified.

Q. Did you loan to any particular class of customer, person?

A. No; if he qualified we made the loan.

Q. Now, on the time that it took you to close these various types of loans, what was your experience, for instance, with a VA loan?

A. We made the VA loans on the automatic basis, so it took approximately about four weeks; in other words, we qualified the property in the application as far as eligibility was concerned, and made the loan on the automatic basis, and sent it to the VA for guaranty.

Q. Well, then, in that respect your experience differed from (1191) Mr. DeYonker, who testified, I think, it was about four to six months?

A. Well, as far as the VA's were concerned, it probably was, because we processed them on an automatic basis.

Q. How long did it usually take you to complete your FHA type loan?

A. About the same time, three to four weeks.

Q. And your conventionals?

A. Ten days to two weeks.

Q. Did you loan money in 1952, or prior thereto, on property which did not qualify for FHA?

A. Yes, we did. I have in mind properties outside the city limits that FHA would not loan.

Q. What associations or individuals were loaning money on the security of real estate mortgages on residential properties in the Saginaw area?

A. The First Savings & Loan Association, Saginaw Savings & Loan Association, Second National Bank, individuals and one mortgage broker, George Fettters & Company, and Equitable Life Insurance Company.

Q. And that was true in 1952?

A. Yes.

Q. And were there occasions in 1952 when you refinanced mortgages which one of the Savings and Loan Associations held, and they did likewise with you?

(1192) A. Yes, we did.

Q. And have you examples of that sort of refinancing?

A. Yes, I have.

Q. I will show you Exhibit 102-G-2 through 8, and ask you if those are examples of that sort of refinancing?

A. Yes, they are.

Q. Now I will call your attention to only one of these particularly, and ask you to explain Exhibit 102-G-3?

A. The mortgage loan given by Percy G. Bennett and Myrtle M. Bennett to Michigan National Bank, dated September 15, 1950, in the amount of \$4,500, covering Lot 8 in Block 5 of Norman L. Miller's First Addition to the Village of Saline, discharge of said mortgage dated September 15, 1950, by Michigan National Bank, and a mortgage dated December 15, 1952, between Percy G. and Myrtle M. Bennett to First Savings & Loan Association in the amount of \$4,000, covering the same property and description.

(1193) Q. And then here is also a picture in connection with that exhibit, is there not?

A. This picture belongs to this.

Q. That is G-4. Then would you explain Exhibit 102-G-4.

A. That is a real estate mortgage dated May 19, 1952, given by Ernest R. and Ruth A. Miller and Charles A. and Rosemarie Kohler to Michigan National Bank, in the amount of \$28,500. It covers the southeasterly 42 feet of Lot 4 and entirely Lot 5 in Ernest Miller's replat of Section 22, town 12 north, range 4 east, City of Saginaw, Saginaw County, Michigan; and a discharge given by Michigan National Bank to Miller and Kohler dated May 19, 1952, and a new mortgage dated July 1, 1952, from Ernest R. and Ruth A. Miller and Charles A. Kohler and Rosemarie Kohler to Saginaw Savings and Loan Association, in the amount of \$28,500, covering the southeasterly 42 feet—

Q. (Interposing): That is the same description as on the prior mortgage.

A. Yes.

Q. And do you have a picture with that?

A. Yes, I have.

Q. And that is improperly under the tab 3, is it not, in that exhibit book?

A. Yes.

Q. But that is marked Exhibit 102-G-4?

(1194) A. Right.

Q. And is that a picture of the property involved in that last exhibit we discussed?

A. That is right.

Q. And do you know whether that fairly represents the property as it was in 1952?

A. Yes, sir.

Q. Of your knowledge?

A. Yes.

Q. And what is that building?

A. That is an apartment building.

Mr. Van Zile: I will offer Exhibits 102-G-2 through 8.

Mr. Dexter: We have no objection except as to materiality.

The Court: Received.

Mr. Van Zile: Now, the next set of exhibits are 102-G-1 and 102-G-9 through 29, and I think perhaps we can shorten this up if Mr. List will explain what he did in connection with those exhibits.

Q. (By Mr. Van Zile): Would you simply explain what they are? First, Exhibit 102-G-1 is what?

A. That is a map of the City of Saginaw.

Q. And what have you done with that map?

A. That map shows various locations that are drawn in color and numbered which will identify the areas covering these (1195) mortgages under this exhibit.

Q. Now, you have them marked or coded by number; is that correct?

A. That is right.

Q. And starting with Exhibit 102-G-9, 102-G-9 is number 1 on this map, is it not? Is that correct?

A. Yes, that is right.

Q. And then following that you have other mortgages on locations which are located as indicated on the map as same neighborhoods, is that right?

A. That is right.

Q. Have you done that work yourself? I mean identified the homes through the legal descriptions and gone out and inspected the premises?

A. Yes, I have.

Mr. Van Zile: I think with that explanation, your Honor, I will offer Exhibits 102-G-1 and 102-G-9 through 29.

Mr. Dexter: These are refinancing transactions?

Mr. Van Zile: These are not refinancing.

Mr. Dexter: These are just regular mortgage transactions showing the location of those transactions?

Mr. Van Zile: That is right. In other words, it will show, for instance, that mortgage No. 1 will be a mortgage to Michigan National Bank in this area on this street. Mortgage No. 2 will be a mortgage to, let's say (1196) First Federal Savings & Loan, whatever the case may be.

Mr. Klein: In the same area.

Mr. Van Zile: Obviously, on the same street, yes, in the same neighborhood.

And I would be perfectly willing to offer this on the condition that you can check it in any way you want and if there are any discrepancies, we will be glad to correct them.

Mr. Dexter: What is the purpose of it?

Mr. Van Zile: The purpose is the same practically as with Mr. Tolhurst, only Mr. List has gone to even more trouble in showing that we do loan money on mortgages in the same general area.

Mr. Klein: As building and loan associations.

Mr. Van Zile: As the building and loan associations.

Mr. Dexter: And G-9 to 29 are the documents that show—

Mr. Van Zile (interposing): Support this code on 102-G-1.

Mr. Dexter: No objection except as to materiality

The Court: We will receive it on that condition.

(1199) Mr. Klein: * * * Your Honor, we have asked Mr. Van Coevering for the intangibles tax returns of the various building and loan (1200) associations who operate in competing areas to that of the bank offices for the year 1952, and I understand he has photostatic copies of those with him. If we may call upon him to do so, we would like to offer them into evidence.

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(1203) The Court: Very well, an order may be in the record here that Mr. Van Coevering produce these returns.

(Mr. Van Coevering thereupon hands documents to Mr. Klein.)

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(1204) (The documents above referred to were thereupon marked for identification by the reporter as Plaintiff's Exhibit 2-A (Calhoun Federal Savings & Loan Association); 2-B (Industrial Savings & Loan Association); 2-C (First Federal Savings & Loan, Flint); 2-D (Detroit and Northern Savings & Loan); 2-E (Grand Rapids Mutual Federal Savings & Loan); 2-F (Mutual Home Federal Savings & Loan); 2-G (West Side Federal Savings & Loan); 2-H (Capitol Savings & Loan); 2-I (Lansing Savings & Loan); 2-J (Union Building & Loan); 2-K (East Lansing Savings & Loan Association); 2-L (Marshall Savings & Loan); 2-M (Homestead Savings & Loan); 2-N (Citizens Federal Savings & Loan); 2-O (First Savings & Loan); 2-P (Saginaw Savings & Loan).)

Mr. Klein: Your Honor, there have been marked by the court stenographer photostatic copies of the intangible tax return of the various savings and loan asso-

ciations heretofore referred to operating in localities where the plaintiff, Michigan National Bank, had offices, for the year 1952, Exhibits 2-A to 2-P, inclusive, with the name of each association appearing on each exhibit, and I understand the court stenographer, in describing the exhibit, will detail which Association is referred to in each exhibit.

I would like to offer them in evidence.

Mr. Dexter: Your Honor, they include more than (1205) just the return. By the "return", it is a tax return, plus the supporting documents. It is the complete file.

Mr. Klein: All right.

Mr. Dexter: Of each one, for the year 1952.

The Court: Very well. Any objection?

Mr. Dexter: No objection.

The Court: Received.

Mr. Klein: Now, your Honor, the next set of exhibits, if your Honor will be good enough to refer, starting with page 27 of our Affidavit of Merits, paragraph 19, it may assist us in following through the next series of exhibits, which are certified copies.

We have marked as Exhibit 6, a document, together with a certificate; the document is published and issued by the Home Loan Bank Board of the United States, Washington, D. C. It is entitled "Combined Financial Statements of Members of the Federal Home Loan Bank System." The book itself consists of some 75 pages, but we only propose to offer page 28 relating to Michigan.

The document has attached to it the certificate of Harry W. Caulsen, Secretary of the Federal Home Loan Bank Board, certifying and referring to the one for 1952, and was prepared and distributed by the Federal Home Loan Bank Board. The certificate is dated May

20, 1958, and bears the (1206) seal of the Federal Home Loan Bank Board.

Now, the exhibit itself, just so we may sufficiently describe it, and the purpose of this exhibit, referring to page 28, contains, under the heading "Michigan," on the right-hand side of page 28, a statement of member Savings and Loan Associations, Table 9 of this exhibit, assets and liabilities by states, and class of Association, December 31, 1952, showing the number of Associations in the State of Michigan, the number of Federal Associations, and the number of State Associations shown separately, together with a total combined balance sheet of assets and liabilities of the Michigan and Federal. And, when I say "Michigan," I mean Associations which were operating in Michigan in 1952, some sixty-three in number, showing their assets, their liabilities, including the amount of first mortgage loans in the aggregate, including savings capital or shares, and other pertinent items; and then on the bottom of the table the percentage of first mortgage loans to assets, the percentage of cash of U. S. Government to assets, the percentage of savings capital to assets, and the general reserves and undivided profits in percentage ratios to assets.

(1207) The purpose of the exhibit, sir, is this: we have first shown—I believe we have shown—the balance sheets, statements of condition of the bank as at December 31, 1952, and of the respective building and loan associations operating in the same localities as the bank; that is, in those areas.

We believe it pertinent, and, if your Honor will recall reading the decisions such as the Hartford case and the Minnesota case, there were statistical data submitted to the Supreme Court or in the lower court initially of state-wide, in fact, even federal-wide, operations of the various alleged competing institutions, and we offer this

Exhibit 6 to show the scope of the operations, the general character of the operations; not only in the specific local area, but, in this instance, state-wide.

We think it will be helpful to the court in just appraising the general situation, and we offer the exhibit as a bit of statistical information so that the court may consider the specific local operation in the perspective of that statistical information.

Exhibit 6 is offered.

Mr. Dexter: Object as being immaterial, not the best evidence and not properly authenticated.

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(1210) The Court: . . . It is received subject to counsel's objection.

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(1211) Mr. Klein: . . . We have here a Certificate from the Federal Home Loan Bank Board in respect to a publication and statistical data issued by the Board, called "Savings and Home Financing Source Book" for 1957, together with a Certificate of Mr. Caulsen, as Secretary, dated June 26, 1958.

Now, in that book there are a number of exhibits we want to offer. The first one is Exhibit 6-A, which is Table 26 in the book, showing nonfarm mortgage recordings of \$20,000 or less by type of mortgagee, and it shows it for the United States and also by states, including Michigan.

The Court: Have you got the right table? This is type of lender on 6-A, isn't it?

Mr. Klein: I know, but we had to vary that (1212) a little. It is varied a little, but we have that covered also, sir.

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And it shows nonfarm mortgage recordings of \$20,000 or less by type of mortgagee, to wit: Savings associations, insurance companies, commercial banks, mutual savings banks, individuals, miscellaneous, and the total. It is for the entire United States, and then by certain selected states, including Michigan.

It is for the year 1956, and I suppose in that respect, although we think it is proper to show the growth and development of these associations and the character of their operations, how they have expanded so greatly—we think that it is pertinent—I anticipate Mr. Dexter is going to object to anything after 1952, but we think it is pertinent to show what has happened.

The Court: Then it is not the same as Table 19 here, which is found as Exhibit 6-A to your Affidavit of Merits; is that right?

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Mr. Klein: No, sir.

(1213) Mr. Dexter: Your Honor, I make the same objection (1214) to 6-A as to 6.

The Court: It will go on a separate record because of 1956.

Mr. Klein: Yes, sir. Now, 6-B, your Honor, is again the same type of financial statement, members' combined financial statement, of the Federal Home Loan Bank system, except this is for the year 1956 as compared with the book, Exhibit 6, which was for the year 1952, and we offer this for Table 19 at page 28, showing the balance sheet situations of savings and loan associations in Michigan as at the end of the year of 1956.

The Court: It will go on a separate record. If you want to get any objections on the record, Mr. Dexter, go ahead.

Mr. Dexter: Well, as to all of this statistical information, as far as I can ascertain now, we would object to the fact that it is not the best evidence, they are not properly authenticated, they are not self-authenticating documents, they are irrelevant and immaterial.

The Court: Well, because they are for 1956 I am going to put them on a separate record, and when the Supreme Court gets around to deciding admissibility, they might as well decide all the questions.

Mr. Klein: When I said Table 19, sir, I meant Table 10 on page 28. I said Table 19.

(1215) Now, Exhibit 7 is again in the same source book, which is duly certified as a publication issued and prepared by the Federal Home Loan Bank Board, being the source book of 1957, and we offer Exhibit 7, which is page 15, which is entitled "Investments of Individuals in Savings Accounts, U. S. Savings Bonds and Life Insurance Reserves," for the period as at the end of 1920, and for the various periods shown therein up to and including December, 1956 by classification of savings accounts—that is, savings associations, mutual savings banks, commercial banks, postal savings, credit unions, savings bonds U.S. Government, reserves of life insurance companies, and totals.

I suppose any information after 1952, although we think it is competent as to all, if the ruling is the same, at least we would like the part after '52 for the special record, and including '52 and up to '52 as part of the regular record.

The Court: Does that include the investment of shares in building and loan and savings and loan?

Mr. Van Zile: Yes; savings associations.

Mr. Klein: Yes; savings associations. That is the first one, sir. That is the first column. In other words,

to compare that with the savings in commercial banks, showing the growth during that period in savings associations as contrasted with commercial banks.

(1216) Mr. Dexter: The same objection, your Honor, as to Exhibit 6 and 6-A. That is, they are not the best evidence; not properly authenticated, not self-authenticating, irrelevant and immaterial.

Mr. Klein: May we have it that the same objection applies to all these exhibits? Then you won't have to make the objection every time.

Mr. Dexter: All right.

The Court: There will be the same ruling with respect to 6; that it is received for the purposes stated up to and including the year 1952. Thereafter it will be on the special record.

Mr. Klein: Now, Exhibit 8, your Honor, is a certified copy, with a Certificate of the Secretary of the Board of Governors of the Federal Reserve System, duly authenticated with the Certificate, of the Federal Reserve Bulletin for August, 1956 as issued by the Board of Governors of the Federal Reserve System at Washington, and we particularly offer that for page 821, Supplementary Table 17, captioned "Housing Status of Nonfarm Families (Percentage distribution of nonfarm families within specified groups)," and then it is broken down into income groups from a thousand to two thousand, two thousand to three thousand, up to ten thousand and over; and then with various statistical information—how many own their home, how many rent their homes, and so forth.

(1217) Now, this statistical data here happens to be for 1954, 1955 and 1956. We think it is pertinent, but in view of your ruling, we assume that you will direct that it be made a part of the special record, although we think it should be part of the regular record.

The Court: Same objection?

Mr. Dexter: Well, as I understand Mr. Klein, the same objection as to the other statistical exhibits, 6 and 6-A.

The Court: Same ruling. It will be made a part of the special record.

Mr. Klein: Exhibit 9, your Honor, is a certified copy, with a Certificate of the Commissioner of Labor Statistics of the United States Department of Labor, dated May 19, 1958, with the seal—in fact, this one even has a ribbon on it—showing the average construction costs of new privately owned nonfarm dwelling units started, all types and 1-family by month, for the periods from 1952 through 1957, inclusive. Part of it goes back all the way to 1940 to 1957, and it is by months, and we assume that in view of your Honor's ruling, all reference to periods after December 31, 1952 may be made a part of the special record and the rest a part of the regular record, although we are offering it all for the regular record.

The Court: Subject to the same objection on the (1218) part of the Attorney General.

Mr. Klein: Right, sir.

Mr. Dexter: Same objection, your Honor.

Mr. Klein: Now, Exhibit 10, your Honor, again appears in the same source book previously identified, which is a certified copy, published by the Federal Home Loan Bank Board, in which Exhibits 6-A and Exhibit 7 appear.

This time we are offering page 23, and it is Table 13 and it is captioned "Mortgage Debt, 1-4 Family Nonfarm Homes by Type of Lender" for the period December 31 commencing 1925 and ending in 1956, showing the total of such mortgage debt; then the classifications savings associations—that is, savings and loan—

life insurance companies, mutual savings banks, commercial banks, and then some other columns, and then individuals—that is individual mortgagees, I assume—and then a total for the column; and on the bottom of the table is the percentage of distribution between each type of mortgage.

Since I anticipate your Honor will admit the exhibit in the same manner, all data up to '52 on the regular record, and all data after '52 on the special record, although we are offering it as part of the regular record on all—for instance, it shows in the “Percentage Distribution” that savings and loan associations held over 30 per cent of mortgages by dollar volume in 1952 as compared with 19.2 per cent (1219) of commercial banks at the end of 1952.

The Court: Is there something in those tables somewhere ~~that~~ makes a distinction between what is a commercial bank and what is a mutual savings bank?

In other words, Michigan National has commercial accounts; they have savings accounts. Now, how are they classed?

Mr. Klein: Commercial bank.

We would like to offer Exhibit 10 in evidence, sir.

Mr. Dexter: Same objection, your Honor, as to the other statistical exhibits.

The Court: Same ruling. It is received up through the year 1952. Thereafter, it is on the special record.

Mr. Klein: Then in the same certified volume—that is, Savings and Home Financing Source Book, 1957, Federal Home Loan Bank Board—page 36, we would like to offer into evidence as Exhibit 11 the table therein contained entitled “Nonfarm Mortgage Recordings of \$20,000 or Less By Type of Mortgagee,” and again it has similar classifications—totals, savings associations, insurance companies, commercial banks,

mutual savings banks, individuals, miscellaneous—and this is for the period from 1940 through 1956, inclusive.

It also contains a chart showing savings and loan associations and all other lenders, and it also has a percentage (1220) distribution between types of lenders for the same period.

We are offering it all as part of this general record, but I assume, in view of your Honor's ruling, for the period after '52 we request that it be made a part of the special record, and we understand it is subject to the same objection that Mr. Dexter has made throughout here in respect to this type of exhibit.

Mr. Dexter: That's right, your Honor; same objection.

The Court: Same ruling.

Mr. Klein: When I said Exhibit 11 also contained the percentage distribution table, I was in error. Exhibit 12 is the percentage distribution table on page 36, and Exhibit 11 is the dollars-and-cents table. It is out of the same source book.

I offer Exhibit 12, and I suppose subject to the same objection and I assume the same ruling, sir.

Mr. Dexter: That is right.

The Court: Same ruling.

(1221) Mr. Klein: Now, Exhibit 13 (1) is out of the same Source Book of the Federal Home Loan Bank Board of 1957, which has been certified. And, in that respect we offer Table 23 entitled number and amount of VA home loans closed, by type of lender, and, again, this has a total; it is classified Savings Association, Insurance Companies, Mutual Savings Banks, Commercial Banks, Mortgage and R. E. Companies—whatever that means—individual and others, and a total and this is for the period from 1951—the number is shown from 1944 to 1956 in one column, and then there

is another column of annual data from 1951 to 1956, principal amounts, and then again annual data by years; and on top of that is a Chart 1, one for 1944 through 1956, combined, I suppose, cumulative, and then for the year 1956.

We are offering it for the general record, but we assume, in view of your ruling, all information subsequent to 1952 will be considered as part of the special record, and all information up to and including 1952 part of the general record.

The Court: You spoke correctly when you said it was Table 23? The reason I ask you, Table 13 shows 22 is a VA and 23 the FHA.

Mr. Van Zile: That is the number of the table in the U. S. Savings and Loan League fact book, but not in (1222) the official Source Book.

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Mr. Dexter: Same objections, your Honor, as to Exhibit 13 (1).

Mr. Klein: And I am offering 13 (2). Exhibit 13 (2), sir, is a certified copy, in affidavit form, of the Director of the Division of Research and Statistics of the Federal Housing Administration, dated May 23, 1958, to which is attached statistical information of the Federal Housing Administration, so marked, entitled "FHA Home Mortgages Originated and Held by Type of Institution 1952." The first page is 1952; the second page is 1953; the third page is 1954; next is 1955, and the next is 1956, and showing the dollar amount and percentage of distribution by type of institution, national bank, state bank, mortgage company, insurance company, savings and loan association, savings bank, Federal agency, all other, and total.

We are offering it all for the general record, but I again assume, in view of your Honor's ruling, the

(1223) 1952 table would be in the general record and the balance in the separate record, if that is agreeable.

The Court: Same ruling on both Exhibits 13 (1) and 13 (2), subject to the same objection.

Mr. Klein: The next exhibit is Exhibit 14, which is a certified copy of some statistical information, a booklet, entitled "Federal Home Loan Bank Board, Washington, D.C.," and entitled "Trends in Savings and Loan Field," for the year 1956, describing certain changes in certain areas, particularly the growth, from 1922 to 1956, and so forth. We are particularly interested in pages 2 and 10 of that document.

Attached to it is a certificate of the Secretary of the Federal Home Loan Board.

I suppose any information after 1952, in view of your Honor's ruling you will make that a part of the special record, although we think it ought to be general.

The Court: I see the pages of text there. I do not want to get to the point I am reading text books here.

Mr. Klein: No, we are only offering the statistical, that is why I referred to page 2, which is a table, and page 10, which is a table.

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(1224) Mr. Klein: We agree with Mr. Dexter, if there is any explanatory notes or statements in the body of the statement, explaining the particular table, we certainly intend that that should be included, so that anyone who reads may understand it.

The Court: Exhibit 14, same ruling.

Mr. Klein: 14, yes, sir.

The Court: Subject to the same objection on the part of the Attorney General.

Mr. Klein: Yes, sir. Now, Exhibit 15 is, again, (1225) from the Federal Home Loan Bank Source

Book, which is a certified copy, which has already been identified, and we at this time offer Exhibit 15, which is there marked page 28, and it is Table 17 "Mortgage Loans Made by All Savings Associations," and it is annual data commencing with the year 1940 and going through the year 1956, showing the purpose of the loan, construction; and another table, home purchase, other, total loans; then where VA loans are included, it is indicated; and there is other information on there.

I assume it is subject to the same objection, and do I correctly assume, sir, that up to and including the year 1952 it will be made a part of the general record, and in respect to the periods after, though offered for the general record, will be made a part of the special record?

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(1227) The Court: Well, it will be received with that understanding, that if the Attorney General convinces me, on further examination, that some of those are the result of a survey of somebody sent out from Washington, I will strike it out, but if it is based on statistical information sent in by the Associations, it will be received.

Mr. Dexter: I understand you are admitting only the statistical information. For example, there are graphs, but it is the statistics themselves.

The Court: I think the only thing offered up to this time has been the statistical matter.

(1228) There is no Exhibit 16 or 17.

Now, Exhibits 18, 19 and 20 all appear in this certified Federal Reserve Bulletin of April 1958 to which I have previously referred. This is a new one, April, 1958. Exhibit 18 is on page 470 of that exhibit, and we would like to offer, as Exhibit 18, two Tables on the bottom of that page, one Table is marked "Mortgage Activity of Savings and Loan Associations for

the years 1941 up to and including January of 1958 by Loans Made," that is, total new construction, home purchase; and then another one, loans outstanding (1228 1/2) at the end of the period; total FHA insured; VA guaranteed, and conventional.

(1229) The second table on the bottom of the page is entitled "Non Farm Mortgage, Recording of Twenty Thousand or Less," and this is for the period from 1941, and this goes through February of 1958, and then it gives it, among other things, by type of lender, showing savings and loan associations, insurance companies, commercial banks, mutual savings banks.

I would like to offer Exhibit 18 into evidence for the general record. I assume in view of your ruling up to and including 1952 would be in the general record and the balance in the special record, all subject to Mr. Dexter's continuing objection.

Mr. Dexter: Plus the fact, as I understand, your Honor, if this is not tabled based on information required to be reported to the particular agency that is compiling it, it is not within the scope of your admissibility ruling.

Mr. Klein: The bottom of these exhibits shows source, Federal Home Loan Bank Board.

Mr. Dexter: The source was the Federal Home Loan Bank Board, and this particular publication or office or agency was not the source of the material.

Mr. Klein: Exhibit 19 on page 469 of the same Federal Reserve bulletin, April 1958, put out by the Board of Governors of the Federal Reserve System, and we offer the exhibit on the bottom of the page entitled, "Mortgage Loans (1230) Held by Banks," and that shows commercial bank holdings, total, FHA insured, VA guaranteed, conventional, other non-farm, farm, and that is for the period of 1941 through De-

ember 1957, showing the source of the information in the report and so forth.

We only are offering that as to commercial bank holdings, which is on the left side of the chart, although there is a similar table for mutual savings bank holdings.

I assume that it is subject to Mr. Dexter's continuing objection as he has expressed, everything he has said about it with respect to any of these statistical exhibits.

We offer it for the general record. We assume in view of your ruling that all information up to and including 1952 would be a part of the general record, all the remaining information a part of the separate record.

The Court: Same ruling with respect to Exhibits 18 and 19, and subject to the objection of the Attorney General.

Mr. Dexter: I would like the record to show, your Honor, on Exhibit 19: "Sources. All-bank series prepared by Federal Deposit Insurance Corporation from data supplied by Federal and State bank supervisory agencies, Comptroller of the Currency, and Federal Reserve." None of the statistical information includes as original source information to be filed with the agency making this statistical report.

(1231) Mr. Klein: The Federal Reserve is included, and the Comptroller of the Currency. I would think that was a pretty valid—

Mr. Dexter: As to the bank—

Mr. Klein: (interposing): That is, all I am offering it to.

Mr. Dexter: As to the bank, your sources are—

Mr. Klein: (interposing): Commercial bank holdings.

The Court: Same ruling.

Mr. Klein: Now, Exhibit 20 is the last of this statistical information which appears on page 449 of the same Federal Reserve Bulletin of April 1958, and it is entitled, "Principal Assets and Liabilities and Number of All Banks By Classes," showing in the caption, "Loans and Investments," Total, then Loans United States Obligations, Other Securities, Cash Assets, and then there is another Total Assets, Total Liabilities and Capital Accounts. Then another heading, "Deposits," Total Interbank, and various breakdowns and number of banks, and this is for the period from December 30, 1939, for all banks.

There is another table for all commercial banks, and then there are some other tables for other type banks. We are particularly interested in the all commercial banks table, and that is for the period from December 30, 1939 (1232) through February 1958.

I assume it is subject to the same objection, and the part after '52 would be made a part of the special record; all before, the general record.

Mr. Dexter: Same objections, your Honor, and I would like to point out that Exhibit 20 in a parenthetical statement says, "Figures Partly Estimated."

Mr. Klein: Those are only a few—

Mr. Dexter: (continuing): "Except on call dates." How would you know, Mr. Klein?

Mr. Klein: Those are where they are marked "P" for the year 1957 only and not in respect to the others. They are preliminary as to 1957, and as to other items they are not preliminary.

Mr. Dexter: It does not so state.

Mr. Klein: It so states precisely. I have the exhibit in front of me.

Mr. Dexter: I was just, your Honor, calling your attention to a line that appears as part of the exhibit.

Mr. Klein: The line appears from July 1957 with a little footnote "P", and that says, "Preliminary," and as to all others it is not "P."

The Court: Maybe you are not talking about the same thing.

Mr. Dexter: Maybe we are not talking about the (1233) same thing, your Honor. I was just calling your attention to this parenthetical remark up here, which is not tied into any footnote whatsoever.

Mr. Klein: That part? That is all right. We assume you will give it the weight which it deserves.

The Court: Same ruling. It is received.

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(1241) The Court: Well, the Court will take the responsibility of separating the cases for trial. I will take that responsibility. I think administrative justice requires it here.

I don't see any reason the intervening plaintiffs or you, for that matter, should be put to the expense of traveling all over Michigan, or force them to come down from the Northern Peninsula, as I remember some of them had to, (1242) until we know what the Supreme Court is going to do on this issue. It seems to me that is proper; administrative justice requires it. And as far as I am concerned, I won't put it on the basis of a stipulation; I will put it on the basis as I am ordering it as being a proper method of trying this case.

Mr. Dexter: Your Honor, at this time I would also like to renew our motion for a judgment of no cause of action, based upon the grounds previously noted before your Honor.

We believe that basically this is a question of law. Basically, the question of fact that was presented be-

fore your Honor was, was there a change in the nature of savings and loan institutions, or some marked change in the nature of banks or banking functions and national banks, and we simply believe that none of the evidence has shown any marked change, and therefore, the express pronouncements of the Supreme Court of the United States and other courts as we have summarized in our brief in support of our original motion for a summary judgment still constitute controlling and basic authority that building and loan associations are not within the purview of 5219 of the United States Code Annotated.

The Court: Well, I adhere to the view I expressed at the time you made the motion for summary judgment, that under the court decisions, this is a mixed question of fact (1243) and law. I think there is sufficient evidence to go to the jury, if there were a jury. There isn't one here, but there is sufficient evidence to require that I deny your motion.

I don't want to say anything more on that, because I don't want to say anything as to the weight of evidence at this time. I would rather wait until I get to the end. But I do feel that Justice Taft's observation that building and loans are institutions that permit thrift and build homes for poor people has been slightly changed over the years. At least the poor people angle is out of the picture.

Further than that, I don't want to express any views except those I did express at the time I denied the motion for summary judgment, and I think plaintiff has made such a case that it is entitled to have a trial on the merits.

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(1259) (Exhibit 4-A-29-E was inadvertently left out of list of exhibits on page 1042 of the transcript (July 15, 1958). It was actually marked, and is as described above.)

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(1262) Lansing, Michigan,
Monday, October 20, 1958.
9:30 o'clock A.M.

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(1263) (A document, being the Assets and Liabilities of all active national banks in Michigan as at December 31, 1952, was marked Plaintiff's Exhibit No. 103 by the reporter.)

Mr. Klein: Your Honor, at the conclusion of the last hearing we had a group of exhibits, and we failed to offer one exhibit, which we should have offered, which has now been marked Plaintiff's Exhibit 103, which is designed to show the assets and liabilities of all active national banks in Michigan as at December 31, 1952, which is abstracted from the 90th Annual Report of the Controller of the Currency, 1952.

(1264) It shows the assets, liabilities and breakdown of the loans and real estate loans, deposits.

The Court: What is the date in '52 there?

Mr. Klein: December 31 of '52. It completes the picture, except this relates to the Michigan situation.

Did you wish to see this, sir?

The Court: Not particularly now. I am assuming it will be available to me if it is received.

Mr. Klein: Yes, surely.

Mr. Dexter: Same objection, your Honor, as to this other statistical information.

The Court: Very well. It is received subject to the objection.

Mr. Klein: I think we rested subject to this one exhibit. I again state the Plaintiff rests its case.

Mr. Dexter: May it please the Court, there are a couple of preliminary matters I would like to call the Court's attention to and have on the record.

One concerns the stipulation concerning the activities of certain savings and loan associations pursuant to pages 539, 540 and 573 of the record.

I would like to have marked and offer in evidence this stipulation. It has been signed by both parties, but the Plaintiff would like to state as part of the stipulation a clarification to item No. 2 appearing on page (1265) 1 of the stipulation.

The Court: Did you misspeak when you said the Plaintiff would like to state it?

Mr. Dexter: No.

The Court: Plaintiff would like to state it?

Mr. Van Zile: Paragraph 2 of the stipulation, which, as I recall the wording, is that the savings and loan associations do not make unsecured loans on the strength of a borrower's financial statement, that we take subject to the understanding that it is not intended to include Title I FHA Loans, which, as we understand it, are made on no security and are accompanied by a statement of the borrower's financial position.

The Court: Will you repeat the reference to the FHA title?

Mr. Van Zile: Title I, sir. They are often referred to as modernization or improvement loans made by the building and loan associations.

The Court: Is that also your understanding, Mr. Dexter?

Mr. Dexter: Right, your Honor.

The Court: Very well.

Mr. Dexter: I don't know whether this should be marked as an exhibit or not.

The Court: To facilitate matters, it may be.

(1266) Mr. Dexter: All right. And I might inform the Court that our exhibit numbering just arbitrarily started at 200, so if the Plaintiff had other exhibits to put in, it would not cause an overlap, and I would like to have this numbered 227.

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(1268) Mr. Dexter: These exhibits have been previously identified and marked and have been now identified and marked by the court reporter to constitute Exhibit 202, consisting of two pages, Exhibit 203, consisting of one page, (1269) and Exhibit 203-A, consisting of one page.

It should be noted that Exhibit 203 and 203-A are pages abstracted from the 1957 Annual Report of the Plaintiff, Michigan National Bank, to its shareholders.

Exhibit 204, Exhibit 204-A and B, Exhibit 205, consisting of two pages, Exhibit 205-A, which constitutes another page abstracted from the aforesaid 1957 Annual Report, Exhibit 206 and Exhibit 207, 207-A, and 207-B

Plaintiff has been furnished copies of these this morning, and I assume that what I have said, your Honor, to the stipulation is all right.

It also should be noted, your Honor, that some of the exhibits have figures that refer to a period subsequent to 1952, and we would assume that those would go on the special record as Plaintiff's evidence pertaining to the subsequent period.

Mr. Klein: There is no objection to the offer and admittance of those exhibits.

The Court: They are then received, and those that date to 1953 and subsequent years are on the special record, as has been ruled on previously.

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Mr. Klein: Just to keep the exhibits straight, if I may, there is another exhibit relating to the exhibit (1270) that has been offered. I would like to have this marked.

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Mr. Klein: Your Honor, we have had marked, and would like to offer a table marked, 104, relating to FHA Title 1 Loan, which appear under the heading of installment loans, along with other installment loans of the Michigan National Bank in Plaintiff's Exhibits 202 and 205.

In other words, in the Exhibits 202 and 205, these FHA Title 1 modernization loans are grouped with other installment loans and not under the heading of real estate loans, and, therefore, to complete the record, since building and loan associations do make these FHA loans, we thought it would be well to offer this exhibit, and, as I understand, Mr. Dexter said he had no objection to the offer.

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(1271) FAIRLES RUSSELL, was thereupon called as a witness by the Defendants, and, having been previously duly sworn, testified further as follows:

Cross Examination

By Mr. Dexter:

Q. (By Mr. Dexter): Mr. Fairles, there is testimony that your bank made conventional mortgages for the term of ten years and then renewed this mortgage for additional ten. Do you know to what extent that was done in 1952?

A. That is like a balloon at the end, you mean?

Q. That's right.

A. We found very, very few instances that that occurred.

Q. In other words, it was very, very insignificant in amount or number.

A. That's right.

Q. Now, in 1952 were any of your residential construction loans made to individuals building their own homes?

A. There would be some.

Q. Were there any construction loans made to those individuals with a specific commitment prior to completion of any specific residential property with that property as security, (1272) with the money or the mortgage money paid on a percentage of completion basis to the individual?

A. There would be some.

Q. Would that be relatively significant or insignificant?

A. On conventionals I would say that it would be the smaller proportion of the real estate mortgage loans made.

Q. Well, were there very many of those made in '52 at all?

A. Well, there would be some. I don't know how many.

Q. You made some mortgage loans to individuals secured by the real estate on which the residential property was being built, with a prior commitment for the total amount of the mortgage and a percentage of the mortgage money paid out during the process of building that home?

A. There would be some.

Q. By "some," do you mean one, two, ten?

A. I don't know how many, but there would be, I would judge, a small percentage on the conventional of that type?

Q. What would you refer as small?

A. I would say on conventional, perhaps—I am just estimating—ten per cent that would be of that nature.

Q. Have you seen any specific books and records you examined in '52 with regard to this question?

A. So far as I recall, I don't know as we discussed this particular phase for conventional mortgages previously.

Q. Then actually, your figures, then, is just a very rough (1273) guess; is that right?

A. That is what I say, yes.

Q. How was the Michigan National Bank sold in 1952, stock?

A. You mean—

Q. (Interposing): How was the Michigan National Bank stock sold in 1952?

A. Over the counter by brokers.

Q. Now, in 1952 did your bank offer for sale to the public or its shareholders any new common stock issues?

A. We have never offered any common stock to stockholders.

Q. Then in 1959, your bank was not trying to obtain additional common stock shareholders?

A. What year?

Q. 1952. Pardon me.

A. No.

Q. Do you know why the new issue of preferred stock was sold by the bank in 1952?

A. We had some RFC preferred stock, and we retired the RFC and reissued it to other purchasers.

Q. Who were the other purchasers in 1952?

A. There were about six other purchasers, six or seven. I don't have all of the names of the purchasers right now.

Q. Well, why was this done?

A. Well, most of the RFC stock had been retired and we have been requested a number of times by the RFC to either retire (1274) or to find another market, so we finally found someone who was anxious or agreeable to purchase it.

Q. How soon was the new issue of preferred stock sold after it was offered for sale?

A. Well, it was all consummated at the same time when we retired the RFC preferred, the new purchasers paid for the new stock.

Q. Was that right the same day?

A. That is right.

Q. Could the preferred stock be redeemed on demand?

A. No. You mean, could the RFC redeem it on demand?

Q. No, your preferred stock, RFC or anyone else be redeemed on demand?

A. No.

Q. Could the common stock be redeemed on demand?

A. No.

Q. In 1952, were the stockholders of the Michigan National Bank of a higher economic class than the share account holders of savings and loan associations?

(1275) A. I don't know.

Q. (By Mr. Dexter): Were they of a higher economic class than depositors in your bank?

A. I would say they were the same.

Q. And how do you draw that conclusion?

A. Well, I have been in some of the savings and loan associations from time to time and just observing the people who are doing business there, they don't look any different from the people who are doing business with us.

Q. Apparently, Mr. Fairles, you misunderstood my question. What I mean to say is: Are the stockholders of the Michigan National Bank of a higher economic class than the depositors of the Michigan National Bank in 1952?

A. I would say not.

Q. In other words, Mr. Stoddard is of no economic class than the average depositor?

Mr. Klein: I object to that. Talking about a class, he picks out one person. It is not a class.

Mr. Dexter: We are getting just a little bit (1276) more specific, Mr. Klein.

A. We have about 3,500—you are talking about stockholders now?

Q. Yes.

A. We have about 3,500 and we have got them of every financial class. A lot to stockholders were people who were former depositors of the various banks that became part of the Michigan National and they took stock for part of their deposit in the old bank, so they were depositors and now stockholders and they are of all financial classes.

Q. Were they of a generally higher economic class than the depositors?

A. I wouldn't say so, not generally.

Q. And as I understood, you depicted the depositors as people making thrift deposits, thrift savings; is that right?

A. We have both classes of depositors. We have got thrift deposits and demand deposits and time deposits.

Q. Well, Mr. Fairles, would you say that the stockholders of the Michigan National Bank in 1952 were of a higher economic class than the time depositors of the Michigan National Bank?

A. I wouldn't say so, not on an average.

Q. In other words, you consider both thrift investments?

A. Well, they are both the same financial standing, I would say.

Q. By way of review, Mr. Fairles, what kinds or types of deposit did your bank receive in 1952?

(1277) A. Time and demand.

Q. That was true for each branch?

A. That is right.

Q. What interest was paid on each of these types of deposits?

A. (Examining documents.) 1952, we were paying one per cent per annum, with the exception of Flint, where we were paying one and a half.

The Court: What was that last exception?

A. With the exception of the Flint office, where we were paying one and a half.

Mr. Klein: On savings accounts?

A. Savings book accounts.

Q. (By Mr. Dexter): Did you pay the same amount of interest on all of your time deposits?

A. We had a time certificate of deposit that we were paying a greater rate of interest. We were paying as much as two and a half per cent on time certificates of deposits that were on deposit for a period of five years.

Q. In addition to the payment of interest, what other services were performed by the Michigan National Bank for its depositors in 1952?

A. All of the regular services that an ordinary commercial bank does for its depositors.

(1278) Q. Such as?

A. All types of loans, what they ordinarily do for demand depositors in the payment of checks, receiving deposits, clearing of checks deposited.

Q. Did the Michigan National Bank make loans to individuals, corporations and partnerships in 1952?

A. We did.

Q. Of the aggregate amount loaned in 1952, could you estimate the percentage of the loans made to each of these types of borrowers?

A. You mean—

Q. (Interposing): What was the percentage of the total of the loans you made to individuals?

A. No, I haven't got that percentage.

Q. You wouldn't know how to break that down on individuals, corporations and partnerships? Could you break it down?

A. It could be estimated, but we don't ordinarily break it down to individuals as such on many statistical reports that we make out.

Q. Do you have any valid basis of obtaining a good estimate?

A. Not very much, not at this time. The loans are classified not according to corporate. We do on certain types of loans, but not on all types.

Q. Could you break down, Mr. Fairles, this mortgage loan business to those two, commercial concerns and non-commercial?

(1279) A. You are talking about mortgages now?

Q. Total loans I am talking about.

A. You just said mortgages. Mortgages I do have some figures here, but not on total loans.

Q. You have a breakdown on the mortgages, and I think that is already in the record, isn't it?

A. It is in the record.

Mr. Klein: I am going to ask him, so you may as well, to keep it in continuity.

Q. (By Mr. Dexter): Well, would you give that breakdown, then, Mr. Fairles?

A. As of December 31, 1952, we had a total of mortgages and FHA improvement loans of \$70,291,000. Of this amount, residential mortgages amounted to \$51,419,000; business mortgages, \$10,210,000; farm mortgages, \$445,000—

The Court: (interposing): How many of these?

A. \$445,000 for farm; and improvement, FHA Title 1 improvement loans, \$8,317,000. That should total \$70,391,000.

Q. (By Mr. Dexter): Is that the total mortgages made in 1952?

A. That is the total including the FHA improvement loans.

Q. Is it the total made or the total outstanding in 1952?

A. It is the total outstanding at December 31, 1952. We had a grand total loaned of \$148,304,000.

Q. In 1952 did the bank or a subsidiary corporation have safety deposit facilities?

(1280) A. The bank did.

Q. In 1952 did the bank have a trust department?

A. It did.

Q. Did it act as trustee for testamentary or inter vivos trusts?

A. It acted as trustee, yes.

Q. Did the Michigan National Bank in 1952 act as a collection agent for any of its customers or depositors?

A. It did.

Q. In 1952 did the Michigan National Bank loan any money secured by shares of stock?

A. It did.

Q. In 1952 did the Michigan National Bank loan any money secured by bills of lading?

A. It did.

Q. Did you loan any money secured by fungible goods in 1952?

A. What kind of goods?

Q. Fungible.

A. Yes, we did, yes.

Q. Did you make any unsecured loans in 1952 which were not guaranteed or insured by a governmental agency on the mere strength of a borrower's financial statement?

A. We did.

Q. What are oil loans?

A. What are they?

(1281) Q. Yes.

A. Secured by oil properties and oil leases.

Q. Did Michigan National Bank make any such loans in 1952?

A. We did.

Q. In 1952 did Michigan National Bank make any loans secured by chattels, such as automobiles, appliances and trailers?

A. We did.

Q. In 1952 did your bank make any loans secured by insurance policies?

A. We did.

Q. In 1952 did your bank make any loans secured by livestock?

A. We did.

Q. In 1952 did Michigan National Bank loan any money to finance companies?

A. They did.

Q. How much?

A. I don't know.

Q. Could you obtain that figure for us?

A. I think we could.

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Q. (By Mr. Dexter): In 1952, did the Michigan National Bank issue (1282) letters of credit?

A. We did.

Q. In 1952, did your bank purchase and sell securities or ship and receive the same on the order of a customer?

A. We did.

Q. In 1952, did your bank deal in domestic and foreign exchange?

A. We did.

Q. Did your bank act as a transfer agent for corporate stocks in 1952?

A. We did.

Q. In 1952, did the Michigan National Bank act as a registrar for corporate stocks?

A. We did.

Q. Did the Michigan National Bank act as a dividend disbursing agent in 1952?

A. We did.

Q. In 1952, did your bank act as a coupon paying agent?

A. We did.

Q. In 1952, did the Michigan National Bank act as a trustee for security issues?

A. We did.

Q. Referring to Exhibit 205, which is the bank's operating statements for the years 1942 through '57, what comprises the general loans which produce the interest income noted thereon?

(1283) A. Interest on general loans represents interest received on loans to manufacturers, wholesalers, retailers, and some individuals.

Q. And what comprises the installment loans?

A. Interest on installment loans represents interest on loans in the financing of automobiles, on types of collateral, FHA Title 1 improvement loans, and other types of installment loans, mostly individual.

Q. In 1952, did your bank reject any applications for residential mortgage loans?

A. Yes.

Q. Would one of the reasons for this rejection be the financial condition of the borrower?

A. It may be.

Q. Was it?

A. Well, I don't know.

Q. Well, was that alone the reason?

A. I would say that occasionally a loan would not be granted due to the condition of the borrower.

Q. Would one of the reasons be the interest rate he indicated that he as a borrower was willing to pay?

A. You mean that the borrower didn't want to borrow from us because the interest rate was too high?

Q. Yes, or that he wanted to borrow from you at a lower rate on residential mortgage purposes?

(1284) A. Well, if he didn't want to pay the rate we were asking, he wouldn't get the loan.

Q. And you had rejected loans on that basis in 1952?

A. I don't know. I have never heard of one like that, but I am not sure.

Q. Well, did you reject any applications for residential mortgage loans because of the terms, that is, the borrower wanted a longer term than you were willing to give or able to give?

Mr. Klein: Which type of mortgage are you talking about?

Mr. Dexter: We are talking about the—

Mr. Klein: (interposing): Conventional, VA?

Mr. Dexter: We are talking about all residential mortgages.

A. I don't know specifically. We would have to find out, to look at them and see why they were specifically declined.

Q. (By Mr. Dexter): Well, the question was, did your bank reject any application for residential mortgage loans in 1952 because of the term of the loan being requested by the borrower?

A. I think we may have occasionally.

Q. And the answer would be yes?

A. Occasionally.

Q. The answer would be yes?

A. In a few instances.

(1285) Q. Did your bank in 1952 reject any applications for residential mortgage loans because the borrower wanted to borrow a greater percentage of the appraised value of the property than the bank was willing to lend?

A. We would.

Q. Did you?

A. We did.

Q. In 1952, did any borrower refuse a residential mortgage loan from your bank because of the proposed interest rate?

A. I haven't heard of one.

Q. Not to your knowledge?

A. Not to my knowledge.

Q. Now, what service did the Michigan National Bank perform for local, state and county governmental units in 1952?

A. We accepted deposits from various municipalities.

Q. Did you perform any other service?

A. Well, we made loans to some municipalities.

Q. Is that all?

A. Well, whatever goes along with handling their commercial account, we would do for them, cash their checks, accept the checks that they deposit.

Q. In other words, that was the only physical or monetary significance of the Michigan National Bank for governmental agencies in 1952, was to deposit and commercial account activity?

(1286) A. I said we loaned them money occasionally.

Q. And loaning money occasionally. Is that the extent of it? Is your answer yes?

A. Well, we would do anything that they would ordinarily expect if they had their account with us. I can't think of anything that they may ask us to do, but any-

thing that would be ordinarily expected of the commercial bank, why, we would do for them. We accepted deposits, and we made loans. That is the main part of our business.

Q. Would you concede in 1952 the Michigan National Bank performed no other significant governmental purpose. Mr. Fairles?

A. If you can tell me specifically what you have in mind, I might be able to tell you whether we are doing it or not.

Q. I am asking you.

A. As I say, we do anything that an ordinary commercial bank would do for these municipalities in accepting deposits or making loans.

Q. What is your concept of what an "ordinary commercial bank" will do for governmental agencies?

A. Just what I told you.

Q. Including the Federal government.

A. Just what I told you. We accept their deposit, credit the checks they deposit, cash checks when they draw on us, charge checks that are drawn on us to their account, submit (1287) a statement to them, and make loans when they request such loans and they are entitled to such loans.

Q. Was that the same service that you rendered to your depositors, borrowers?

A. Pretty well.

Q. Now, in 1952 was your bank service to its shareholders to make as much profit as possible?

A. In 1952, were we trying to make money? We were.

Q. As much money as possible?

A. We always try to make—

Q. (Interposing): As much as you can make; isn't that right?

A. That is what we figure we are in business for a little bit.

Q. And the answer to the question is yes, then, isn't it?

A. I would say it is.

Q. Was there any other purpose for its activities as far as stockholders are concerned?

A. To serve the community.

Q. As far as the stockholders are concerned?

A. To serve the community as far as the stockholders are concerned.

Q. In 1952 what was the source of bank funds for lending and other operations?

A. Is that the end of the question?

Q. Yes. What was the source of the bank funds in 1952?

A. Deposits.

(1288) Q. Deposits was the source of your lending funds?

A. In 1952, all of the additional funds that we had to loan was from deposits.

Q. Now, has the Michigan National Bank ever sold any of its common stock to the general public subsequent to the original issue in 1940?

A. We have never sold common stock since Michigan National was formed.

Q. In 1953, your earnings per share before Federal income taxes of a \$10 par value common stock was a little over \$8, as indicated by Exhibits 4-A and 205.

What relation did your deposits have to this earnings per share figure?

A. I don't know offhand, without figuring it out.

Q. But was there a direct relationship between your earnings per share and the amount of deposits?

A. Yes, there would be some relationship between the earnings per share and the amount of deposits. The more deposits we have, the more we have to work with.

Q. Mr. Fairles, what portion of your total capital account—that is, your capital surplus and reserves—was allocated to each of your branches in 1952?

A. We don't allocate anything to any of the branches.

Q. Is such an allocation possible?

A. Anybody could make any kind of an arbitrary allocation, but (1289) there is no necessity for it, and we don't do it.

Q. I mean, it is only possible to the extent you just would arbitrarily do it?

A. That's right.

Q. But it would have no significance, as far as the Michigan National Bank was concerned, in 1952?

A. None whatsoever.

Q. Your entire capital is available wherever the bank does business?

A. That's right.

Q. Now, in 1952, what part of Michigan National's outstanding shares of common stock was actually competing in Grand Rapids with other moneyed capital?

A. We just mentioned that we didn't make any distribution according to offices, as far as the special stock is concerned.

Q. But this account we are talking about, Mr. Fairles, is the \$13,000,000 figure, and I believe the bank has assets in excess of \$205,000,000.

Now, I am asking you what part of this \$13,000,000 figure was used in the Grand Rapids area in competition with other moneyed capital?

A. It is all used in every area. We don't break it down. It is one bank, and we use the capital—as far as the capital is concerned, it is in every area.

(1290) Q. And that would be your answer in regard to all your other areas—in Lansing, Battle Creek, Marshall, Port Huron, Saginaw and Flint—all this capital was used?

A. That's right.

Q. Could you state, Mr. Fairles, what part of this total capital figure of \$13,000,000 was used in your total area in the mortgage business in 1952?

A. All of it was used everywhere, in every area. We don't break it down at all.

Q. What portion of the total assets were loaned in 1952?

A. December 31, 1952, we had total loans of \$148,305,000; total deposits of \$282,617,000.

Mr. Klein; Capital stock?

A. And total capital stock on December 31, 1952, of \$14,931,000, including reserve for loan losses. So our loans were a little less than half of our total assets.

Q. Now, Mr. Fairles, how would you allocate your capital as employed in the mortgage business or the loan business, as contrasted to allocating your capital to your other assets, cash, government securities, and so forth?

A. We don't allocate it at all.

Q. You could not make any allocation of it?

A. We have no necessity to do it and we have never done it and there is no reason for doing it.

Q. You couldn't then trace any one dollar of your capital (1291) account to any particular mortgage activity in 1952?

A. No.

Q. Or any portion of it?

A. No portion of it.

Q. Describe the governmental agencies which supervised Michigan National Bank in 1952?

A. The Controller of Currency, Washington, D. C., is the only governmental agency that directly supervises national banks.

Q. Could you give a description of the type of supervision?

A. They have national bank examiners that work out of Chicago; they ordinarily come twice a year and make a complete examination of all of the offices of the Michigan National Bank at the same time.

Q. What does that kind of an examination consist of?

A. They run all of the assets and all of the liabilities and they value the assets.

Q. Do you know some of the reasons or purposes behind that kind of a check as far as they are concerned?

A. They are supposed to make sure that all of the assets and liabilities are in balance and proper, and also the value of the assets, to determine if there are any losses.

Q. And would they be interested in the liquidity position of the Michigan National Bank in 1952?

A. They figured the liquidity.

Q. And is that significant in their examination?

(1292) A. They have it as part of their examination.

Q. Now, were deposits in the Michigan National Bank insured by any Federal agency in 1952?

A. The Federal Deposit Insurance Corporation.

Q. And in what amount?

A. \$10,000 for a deposit in the same name.

Q. Now, was the capital stock of the bank insured by any Federal agency in 1952?

A. No.

Q. Now, Mr. Fairles, are you familiar with the brochure entitled "Facts about the Difference Between Banks and Savings and Loan Associations," sir?

A. Yes.

Q. (By Mr. Dexter): Did Michigan National Bank have anything to do with its preparation?

A. We made one up something similar for our own information.

Q. In other words, you did have something to do with its preparation?

A. We did.

Q. Did you have something to do with its contents, what content (1293) it was going to contain?

A. Well, I think we did have quite a bit to do with its contents.

Q. Now, did the Michigan National Bank pay part of the expense of its printing?

A. It did.

(A brochure was marked Defendant's Exhibit No. 217.)

Q. I will show you an exhibit marked 217. Is this the brochure which we have been talking about?

A. It is.

Q. Did the Michigan National Bank circulate that brochure?

A. Along with other banks, we did.

Q. And it was available for people to pick up at your place of business?

A. It was.

Q. At all your places of business?

A. That is right.

Q. Do you know what the purpose of its circulation was by the Michigan National Bank?

A. Just what it says, to give the people the facts about savings and loans and banks.

Q. Does it make a comparison between savings accounts in banks and savings share accounts in savings and loan associations?

Mr. Klein: Your Honor, I think that the exhibit speaks for itself, and we can have it read in the record (1294) if he wants.

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Mr. Dexter: I would like to offer Exhibit 217.

Mr. Klein: When was that published?

Mr. Dexter: It is not indicated on the exhibit.

The Court: Do you know when it was published, Mr. Fairles?

A. No, I don't know the exact date.

The Court: Was it in 1952 and prior years, or after that?

A. I think it was published prior to '52, although I am not sure.

Q. (By Mr. Dexter): But the same references here would be equally true in 1952?

A. That is correct.

Mr. Dexter: I would like to offer Exhibit 217.

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(1296) The Court: But if both sides want it in, why, I am certainly not going to object.

(Received by consent.)

Q. (By Mr. Dexter): How can you loan out any more than your capital? For instance, I understand in 1952 your capital account was around \$13,000,000, and you loaned 143-some-odd-million dollars. How can you do this?

A. We have loaned part of our deposits.

Q. In other words, deposits make it possible for you to do this?

A. That's right.

Q. Now, in 1952, did you make any loans secured by real estate mortgages in counties outside the counties in which you had (1297) branches?

A. We did.

Q. And do you know what counties those were?

A. No, I don't.

Q. Did you make loans to borrowers throughout the State of Michigan?

A. We did.

Q. In 1952 did you make loans to borrowers who resided or conducted a business outside of Michigan?

A. We did.

Q. What was the principal type of loans made to borrowers outside of Michigan in 1952?

A. We made loans of all types.

Q. What was the principal type of loan made to borrowers outside of Michigan?

A. The principal type in dollar volume was mobile home or house trailer loans.

Q. What we refer to as trailer paper?

A. That's right.

Q. Did your 1952 earnings on trailer paper produce a greater yield per dollar loaned than your loans secured by residential mortgages?

A. Yes, they did.

Q. It was a substantially greater yield, was it not? (1298) A. Substantial.

Q. Now, what effect would an increase in the number of real estate loans made by your bank in 1952 have had on your liquidity?

A. Well, we always keep them within certain ratios of our total assets so that we didn't have any problem to speak of in that connection.

Q. What effect would an increase in the number of real estate loans made by your bank in 1952 have on this liquidity?

A. If there happened to be FHA mortgages, it doesn't make as much of a difference because they are guaranteed by the United States Government, by the Federal Housing Administration.

Q. And is the FHA type of loan more marketable than the conventional loan?

A. Not ordinarily. We sell occasionally both types and the interest rate governs the price pretty well.

Q. As I understand it, if your real estate mortgage loans in 1952 had increased, that would have decreased your liquidity, would it not?

A. If they are FHA mortgage loans, it wouldn't have made much difference because they are guaranteed by the Federal Housing Administration. They are included in our report to stockholders, along with cash, United States Government (1299) and guaranteed loans.

Q. You treat FHA mortgages as a liquid item?

A. We treat it as a liquid item in our statement to stockholders, the same as we do to U. S. Government bonds.

Q. How about statements to the Controller?

A. They are shown as a separate item stated to the Controller.

Q. They are not liquid to the Controller but they are liquid to the stockholders, is that it?

A. No. He considers them when he makes examinations; he asks for it specifically, for a breakdown of loans, whether they are guaranteed or whether they are not, and they take that into consideration, too, whenever they make an examination or when they get a report from us.

Q. May I ask you this, Mr. Fairles, how can you treat a mortgage of the length of term that you say your average FHA mortgages were as a liquid asset? Uncle Sam—you cannot convert it to cash with the Federal Government, if you want to, can you?

A. We can convert it to cash with a less of a loss than we can on U. S. Governments today.

Q. By that you mean, by selling the mortgage?

A. The mortgage would be the same dollar volume mortgages; we would have a less of a loss on it than we would on Governments, and that is true of most banks right today.

Q. That is selling the mortgage?

(1300) A. Selling the mortgage or selling the Government bonds. I mean your loss on the sale of the mortgages, say, for instance, if you sold them to an insurance company or to the Federal National Mortgage Association, on million dollars right today, you would take less of a loss, the majority of the banks would, by selling them than they would by selling U. S.—you would take more of a loss on U. S. Government bonds.

Q. And it is for that reason, because of the readily marketability of the FHA that you can treat it as a liquid asset?

A. The main reason is because they are guaranteed.

Q. I mean, the guarantee and the uniformity of the FHA type of mortgage lends itself to this readily marketability concept?

A. They aren't any more marketable than the conventional mortgage because they all go for a price, depending upon the interest rate, but the main reason we include it along with cash, U. S. Governments, is the fact that it is guaranteed and we don't only include the FHA mortgages in that category, we include other types of guaranteed loans.

Mr. Klein: Guaranteed by whom, Mr. Fairles?

A. Guaranteed by some branch of the United States Government.

Q. (By Mr. Dexter): Now, wasn't your investment in trailer paper in 1952 criticized by the Controller because of its effect on your banks' liquidity?

(1301) A. I don't believe it was on account of the effect of liquidity. Ever since we or any other bank went into the financing of what we call trailer paper, vehicles or mobile homes, the national bank examiners haven't had the same amount of experience that they have had with mortgages and they figure it was a concentration of more in that type of asset than they felt was warranted, and that the only criticism that they have ever mentioned to us. They never mentioned anything about liquidity. It is just a concentration of more in that type of asset.

Q. Didn't you answer such criticisms by representing that your projected deposits and/or capital would restore or preserve your bank's liquidity?

A. We hadn't gotten into the liquid angle as far as the mobile home, just the fact of the concentration of too much in one type of asset.

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(1302) Q. (By Mr. Dexter): Mr. Fairles, does the granting of conventional loans affect the liquidity of the bank?

A. Of conventional mortgages?

Q. Yes, conventional mortgages.

A. The more loans of any type that we have in proportion to our capital would affect the liquidity of the bank.

Q. And this would be particularly true of conventional mortgages, long term?

A. Not particularly, because both types of mortgages, what we want to be in our various localities is the main source of funds for mortgage, real estate mortgage loans, and quite a few years ago we established contacts with savings banks in the east and insurance companies throughout the country to act as their agent in real estate mortgage loans, and we originate, sell and service real estate mortgage loans, conventional and FHA, to these concerns, and for that reason we are in a position to create proportionately more of the real estate mortgage loans than we ordinarily would if we planned to hold them all ourselves. So the liquidity wouldn't make any difference, because if we felt we were reaching the point where we were originating more real estate mortgage loans than we should keep for our own account, why, we would sell them to these savings banks and insurance companies, and (1303) we have in the past also sold to federal national mortgage associations.

Q. But to answer my question, conventional mortgage loans on the books of the bank as of any given date does affect the bank's liquidity, does it not?

A. It does.

Q. So that the conventional mortgage loans that the Michigan National Bank had on its books as at December 31, 1952, affected the bank's liquidity?

A. It did, along with all other types of loans that we would make.

Q. Now, what was your liquid position in 1952?

A. (Examining documents): The end of 1952, December 31, 1952, we had cash and new from banks of \$46,162,000, U. S. Government securities of \$109,140,000, and we had guaranteed loans of—the figure is not shown here, but I estimate around about 50 million.

Q. That would be what you would show or call generally as your liquid assets; is that right?

A. That is right.

(1304) Mr. Klein: In comparison to the total of how many assets?

A. 309 million 148 thousand.

Mr. Klein: What percentage, approximately?

A. Well, if guaranteed loans are approximately 50 million, which I haven't the figure right here, that would be about two-thirds against one-third.

Mr. Klein: Two-thirds what?

A. Two-thirds cash, U. S. Governments and guaranteed loans.

Q. (By Mr. Dexter): Now, Mr. Fairles, does or does not the concentration of your assets in any one field such as this trailer paper have some bearing on liquidity?

A. Well, I claim not, because this mobile home paper or trailer paper is of comparatively short duration, and whenever I have talked with financial bank examiners pertaining to mobile home paper, I have always mentioned to them that they never criticize our real estate mortgages, and they are concentrated principally in the seven cities in which we operate.

The mobile home paper is spread all over the United States. We have no concentration there, and it is to individuals and it is paid rather rapidly. It is limited over a short period of time as compared with, say, real estate mortgage loans.

So I don't feel that it is not liquid. Is that what you meant?

(1305) Q. No. I meant, Mr. Fairles, that the concentration of the assets of the bank to any one particular person or to any one particular type of security does affect liquidity, does it not?

A. No, not necessarily. It doesn't.

Q. In your opinion, it has no effect on liquidity?

A. No effect on liquidity at all. It depends how they pay off, on liquidity.

Q. Well, might the concentration of assets have a bearing upon how they are paid off?

A. Not necessarily. Concentration means in one area.

For instance, if you had a strike in Flint and you had a concentration of your loans in Flint, you would be at more of a disadvantage than if you had it spread all over the United States.

Q. You don't conceive concentration, then, to be in terms of the type of security?

A. No. It is according to area.

Q. Now, of all the funds lent by the bank in 1952, what percentage of the dollar amount was lent to individuals for personal use?

A. Against what type of collateral?

Q. Well, any type of collateral.

A. Well, that is one question way back I told you I didn't know, because we don't have it broken down for all types of loans (1306) to an individual.

Q. Do you have a breakdown of the total commercial loans in 1952 as compared to the total what might be referred to as personal loans?

A. Yes. December 31, 1952, we had general loans, which is loans to manufacturers, wholesalers, retailers and some individuals, 28 million 699 thousand.

FHA mortgage loans, 26 million 945 thousand. That would be to individuals.

Loans other mortgages, 34 million 852. That would be to businesses and individuals.

Installment loans, 57 million 809 thousand, and that would be mostly to individuals.

And total loans of 148 million 305 thousand.

(1307) Q. Can you express that in any rough comparison figures what is to individuals and what is to commercial?

A. (Pause.)

Q. Is that about a 60-40 ratio in favor of the commercial?

A. No, no. Our loans are mostly to individuals. You see, the loans of \$28,699,000—some of those would be to individuals. I would judge perhaps of that figure, roughly two-thirds of the \$28 million might be to business, one-third perhaps to individuals. Of all of the other types of mortgages or all of the other types of loans, both mortgage and installment loan, it would be practically all to individuals.

Q. Is all of your trailer paper with individuals?

A. Yes. There might be one or two instances where they may have sold a trailer to a business, but practically all of it is individuals.

Q. You go through a trailer manufacturer to establish that contact with the individual?

A. No. It is through the dealer; the dealer sends the contracts into us.

Q. Through the dealer? And through the dealer you get the papers?

A. We get the papers from the dealer.

Q. So you would call that to individuals even though you are dealing with dealers?

A. The loan is made to the individual; the individual signs the note and he pays the note and he is the borrower.

(1308) Q. Now, do you know what the scale of service charges made by your bank was during 1952?

A. For commercial?

Q. For checking accounts at each branch?

A. No, not offhand, I don't. I believe the charges were at that time the same in all offices. I believe in the personal accounts, it was five cents for each check paid and we allowed ten cents a hundred per month average balance as a credit against that five cents and on business accounts, it was two cents charge for each item, including the checks, charged against the account and the items that were included on the deposit were deposited and we allowed a credit of ten cents a hundred a month to offset that charge.

Q. I realize this next question you probably would have no way of knowing the answer to, but do you know the approximate total assets of all financial institutions and individuals employing their capital in some phase of the business conducted by your bank in the area that it had operated in 1952?

A. No.

Q. Do you have any way of knowing the total moneys lent in this area in 1952?

A. For what purpose?

Q. For all purposes.

A. You mean all types of loans?

Q. Yes.

A. No, I have no idea.

(1309) Q. The total moneys lent on real estate mortgages in 1952 in the area that the bank operates?

A. Well, we make up reports and I think it is in the material on mortgages recorded in each of our counties; I don't recall the totals on each of those statements.

Q. But I mean outside of that statement there, you have no information?

A. That is the only information that I have.

Q. As I understand it, the bank did do business in counties other than those counties?

A. We did.

Q. And in fact you did business in the states other than Michigan?

A. All over the United States.

Q. All over the United States?

A. Yes.

The Court: Mr. Dexter, does that imply that you had asked him whether he did do any mortgage business outside of the State of Michigan, real estate mortgages? The question is rather general and I want to be sure.

Q. (By Mr. Dexter): You did not loan moneys secured by real estate located outside of the State of Michigan, did you?

A. We did.

Q. You did?

A. Yes, we did.

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(1319)

Re-direct Examination

By Mr. Klein:

Q. Mr. Fairles, looking at plaintiff's Exhibit 202—that is the statement of condition, assets and liabilities, as at December 31, 1952, would you state to the Court the total amount of all types of loans?

A. 148 million 305 thousand.

Q. And included in that amount is approximately 27 million of FHA mortgages?

A. That's right.

(1320) Q. Approximately \$35 million of other mortgages?

A. That is correct.

Q. And according to defendant's Exhibit 104 for '52, you had \$7 million 7 of title 1, FHA Title No. 1 modernization mortgages?

A. That is the average.

Q. Or loans, rather?

A. That is the average; that is Title No. 1 Improvement, FHA Title No. 1 Improvement loans for 1952, the average is \$7,719,000.

Q. So, 27, 35 is 62 plus around almost eight; it is almost \$70 million of either mortgages or FHA Improvement loans?

A. Right.

Q. And what percentage of that was for residential purposes, approximately of that \$70 million?

A. Practically all of it.

Q. Practically all of it?

A. Ninety-five per cent, at least.

Q. And that roughly is ninety-five per cent of \$70 million or around \$65 million or so of total loans were for residential mortgages or modernizations out of total loans of \$148 million?

A. That is right.

Q. Or approximately what per cent is that; that is, approximately it is over forty per cent, isn't it?

(1321) A. Between forty and fifty per cent.

Q. So between forty and fifty per cent of the bank's loan business as at 1952 was on mortgages for homes or modernization for homes?

A. That is right.

Q. Now, referring to plaintiff's Exhibit No. 205 which shows the operating statement of the bank for the year 1952 which shows total interest income of approximately \$11 million, is that correct?

A. That is correct.

Q. And of that amount approximately \$2 million 6 is shown as interest on mortgage loans, is that correct?

A. That is correct.

Q. And approximately, looking at plaintiff's Exhibit 104, \$554,000, is the estimated annual income on these modernization FHA No. 1 loans?

A. Correct.

Q. Or a total of \$3 million 1 of interest less five per cent for the non-residential amounts or almost \$3 million of mortgage income out of \$11 million of interest income.

A. That is correct.

Q. In other words, almost thirty per cent of the bank's interest income for '52 was from residential mortgage loans?

A. That is correct.

Q. And looking at Exhibit 202 again, the estimated \$68 or \$69 (1322) million of residential mortgage loans is approximately what ratio of the total assets of \$309 million? About a little over a fifth, wouldn't it be?

A. Well, between twenty and twenty-five.

Q. That is of all of the assets, including cash and Government bonds and everything?

A. That is correct.

Q. And then in 1952, looking at plaintiff's Exhibit No. 202, what was the total amount of your deposits? Is it \$282 million?

A. Right.

Q. Of which according to the exhibit, \$117 million—almost \$118 million—or approximately forty per cent were in time certificates or savings deposits?

A. That is correct.

Q. And the balance was in commercial deposits?

A. Correct.

Q. Now, I believe Mr. Dexter asked you at the outset whether or not there were many extensions on conventional loans beyond the ten year period. Do you know of any instance when any mortgagor requested an ex-

tension beyond the ten year period when the Michigan National Bank ever declined it?

A. No, I do not.

Q. What was the policy of the Michigan National Bank in 1952 in that connection?

A. In grating extension?

(1323) Q. Beyond the ten year period.

A. Well, if the property and the credit of the mortgagor warranted it, we would certainly extend the credit.

Q. And what has been the experience of the Michigan National Bank as to the desire of mortgagors to pay prior to the ten year period?

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A. Well, from our experience in endeavoring to get information for this trial, we found that the majority of them were paid off before maturity. Either they had sufficient funds to pay off the mortgage or the property was sold and someone new came into the picture.

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(1324) Q. * * * Now, you have testified, Mr. Fairles, that your bank endeavored to be the largest residential mortgage lender in each of the communities in which it had offices and then said something about reselling. When you resold a mortgage to other institutions, did the Michigan National Bank first take the mortgage in its own name?

A. We did.

Q. Did you know at the time that you took those mortgages that you were going to resell them at the time?

A. Not always, no.

Q. Was there any time in 1952 when the Michigan National Bank found itself unable or unwilling to accept additional residential mortgages on homes?

A. No.

Q. Was it looking for additional mortgages on homes in that period?

A. We were.

(1325) Q. . . . Did the bank make a profit or not on mortgages which it originated when it sold mortgages to other institutions?

A. It made a profit.

Q. Did the bank retain most of the mortgages it originated in 1952 or did it sell more than it retained?

A. It retained most of them.

Q. It retained most of them?

A. That is right.

(1327) *Re-direct Examination (Continued)*

By Mr. Klein:

Q. I have had several of the pages of Exhibit 4-A-1 marked further, and I will show you a table in that volume marked Exhibit 4-A-1-A, under the heading, "Consolidated Loans made and paid."

Am I correct in my understanding that the bottom grouping relates to the loans made and paid for the Michigan National Bank as a whole for the year 1952?

A. That is correct.

Q. And then there are certain sub-headings, FHA mortgages, GI mortgages, and other mortgages; is that correct?

(1328) A. That is correct.

Q. And some installment loans?

A. Correct.

Q. Now, under one heading it has "Balance at start of period." What is that?

A. Under year to date 1952, this will be the figures as of December 31, 1951.

Q. That is the first column?

A. That is right.

Q. Now, the second column is a heading, "New Loans."

A. Under year to date 1952 that includes all loans made during the calendar year 1952.

Q. Then the next column, "Principal payment," would that mean the principal payments made during the year 1952 under that bottom column?

A. They represent all of the payments on the loans during the year 1952.

Q. And the last column shows, "Balance at close of period." Is that December 31, 1952?

A. That is the amount outstanding as of December 31, 1952, on the various categories of loans.

Q. And looking at Exhibit 4-A-1-A, does it appear that most of the new loans made on mortgages, GI mortgages, other mortgages, and installment loans were mostly retained by Michigan National Bank or not?

(1329) A. They are mostly retained.

Q. In fact, there is a very, very small percentage that was not retained?

A. Very small percentage not retained.

Q. Now, getting into another subject, I show you Exhibit 4-A-1-B, under the heading of "Delinquent Mortgage Loans December 31, 1952." Does that show the percentage of delinquency by number of mortgages as well as amount?

A. It does.

Q. And that has a breakdown for each of the offices, and then a total?

A. Right.

Q. And I am correct, am I not in stating that there were 1.30 per cent of the total number of mortgages delinquent as at December 31, 1952?

A. That is correct.

Q. And there was 1.14 per cent delinquent in amount as of December 31, 1952?

A. That is correct. That includes the total amount of the mortgage; not just the payment that is past due, but the total.

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(1331) Q. Now, in connection with the operation of your banking business, Mr. Fairles, you were asked by Mr. Dexter what funds are used in the operation of the banking business making loans; does the Michigan National Bank employ and use its capital and surplus funds for the operation of the loan phase of its business?

(1332) A. We use all of the funds, capital, surplus, undivided profits, reserves, deposits, everything.

Q. And a deposit is shown as a liability?

A. It is.

Q. And you are obligated to repay it to the depositor?

A. We are.

Q. But that is not so of your capital account?

A. No, it is not.

Re-cross Examination

By Mr. Dexter:

Q. I understand, Mr. Fairles, you have had a number of stockholders in 1952, of which six owned a large block of that stock, is that true?

A. That six owned a large block of the stock?

Q. Yes.

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A. Which was preferred that took over the stock previously owned by the RFC.

Q. I see.

A. It wasn't the common stock.

Q. Well, can you state, Mr. Fairles, how many stockholders owned controlling interest in the Michigan National Bank in (1333) 1952?

A. How many it would take to make 51 per cent?

Q. Yes.

A. I can't tell without figuring it out.

Q. Would that be a small number of their total shareholders?

A. (Pause.)

Q. Here is Exhibit 204; that might help you.

A. Well, the exhibit here indicates that three per cent in number owned 62 per cent in par value.

Q. Do you know who those three per cent are?

A. There are 68 of them. I cannot name them all off. At this time, December 31, 1952, there were 68 stockholders with a thousand shares or more.

Mr. Klein: Would you read the rest of that?

A. And there were 1685 shareholders. They owned from one to a hundred shares. 524 shareholders that owned from 100 to 1000 shares, and there were 68 shareholders owning 1000 shares or more, for a total of 2277 shareholders as of that time.

The Court: What was the par value of each share? \$10?

A. I can give you the par value and the percentages, too. The percentages, the 1685 represented 74 per cent of the total. The 524 represented 23 per cent. The 68 represented 3 per cent. The totals 100 per cent. And then of the par (1334) value, the 1685 represented 486,605. The 524 represented 1,421,072, and the 68 represented 3,093,323, for a total of 5,000,000 par value at

that time, and the percentage for the total of the par value was 10 per cent for the 486, 28 for the 1,421,000, and 62 per cent for the 3,092,000, for a total of 100 per cent.

Mr. Klein: That doesn't show the market value?

A. No, it doesn't here. Oh, yes, it does. The market value down below here during the year 1952 was \$34 to \$36 a share, for the year 1952.

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SPLAN, THOMAS, was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dexter:

Q. What is your name?

A. Thomas Splan.

Q. Where do you live?

(1335) A. Allen Park, Michigan.

Q. What is your occupation?

A. I am an auditor for the Michigan Department of Revenue.

Q. How long have you worked for the Michigan Department of Revenue in that capacity?

A. Seven years.

Q. Would you describe your professional training?

A. I audit large and small corporations for the various taxes administered by the Department of Revenue.

Q. Of the State of Michigan?

A. Yes.

Q. In other words, you have the duties of general audit assignments of the Department of Revenue and examine various books and records of various corpora-

tions in Michigan for the purpose of determining the correctness for Michigan tax purposes?

A. That is correct.

Q. Did you make an examination of various savings and loan associations in the state?

A. Yes, sir.

(A document entitled "Conventional Loans Made by Associations in 1952 With Term of 10 Years or less and Where Amount Loaned Was 60% or Less of Appraised Value of Security," was marked Exhibit 200 by the reporter; a document (1336) entitled "Summary of Conventional Loans Made by Association in 1952 with Amount of Loan Based on Appraisal of 60% or Less and Terms of 10 Years or Less," was marked Exhibit 200-A by the reporter; document entitled "Allocation of Conventional Loans on Security with Appraised Value of 60% or Less of Loan and Term of 10 Years or Less to Union, Saginaw, and First Savings & Loan Association Loan Classifications," was marked Exhibit 200-B by the reporter; document entitled "Summary and Breakdown of Conventional Loans Made by Savings and Loan Associations in 1952, and Totals of FHA, GI, and Others Made in 1952" was marked Exhibit 200-C by the reporter; and a document entitled "Consolidation of Michigan State Taxes Paid in 1952 by Savings and Loan Associations [Other Than Franchise Tax, Intangibles Tax, Examination Fees, and Tax on Increase in Authorized Capital]" was marked Exhibit 208-A by the reporter).

Q. (By Mr. Dexter): I would like to show you Exhibits marked 200, 200-A, 200-B, and 200-C, and ask you to identify those exhibits.

A. Exhibit 200 is conventional loans made by associations in 1952 with the term of ten years or less and

where the amount (1337) of loan was 60 per cent or less of the appraised value of the security.

The Court: How much or less?

A. 60 per cent.

Q. (By Mr. Dexter): And where did you obtain the information that you used to compile Exhibit 200?

A. From Exhibit 200-A and 200-C.

Q. And would you explain what Exhibit 200-A is?

A. Exhibit 200-A is a summary of conventional loans made by associations in 1952 with the amount of the loan based on the appraisal of 60 per cent or less and terms of ten years or less.

Q. And that was 16 particular associations that are referred to and listed on Exhibit 200-C?

A. Yes, sir.

Q. And that Exhibit 200 would pertain to the same 16 associations?

A. That is correct.

Q. Would you explain Exhibit 200-C?

A. Exhibit 200-C is a summary and breakdown of conventional loans made by associations in 1952, and total of FHA, GI, and others made in 1952.

Q. What was the source of information for Exhibit 200-C?

A. The books and records of the association.

Q. In other words, you compiled Exhibit 200-C by examining the (1338) actual books of original entry of the 16 building and loan associations named therein?

A. Yes, that is correct, with the exception of First Savings and Loan in Saginaw.

Q. And what did you use to get your information for First Savings and Loan of Saginaw?

A. The records of the Savings and Loan Division of the Secretary of State's office.

Q. In other words, you used the reports filed there with them, the examination reports filed with the Secretary of State's office, for your information for that association?

A. That's correct.

Q. Now, I notice on Exhibit 200-A you have a star notation under Saginaw and First (Saginaw) and Union Savings & Loan.

A. Yes, sir.

Q. What is the nature of that starred breakdown?

A. The particular savings and loan didn't have the necessary records to determine these classifications in which these figures appear.

Q. In other words, Exhibit 200-A shows a breakdown of the summary of conventional loans made by the associations in 1952 with the amounts of loans based on appraisal of 60 per cent or less and terms of 10 years or less in terms of the purpose of loans?

A. That is correct.

(1339) Q. That is, construction, purchase, refinance, improvements, and others, correct?

A. Correct.

Q. And did the original records from which you obtained the information as to the length of term and percentage of appraised value for the Union Savings & Loan and the First Saginaw and Saginaw Savings and Loan contain this type of breakdown—that is, construction, purchase, refinance, improvements and others?

A. No.

Q. But did the total loans of those associations show those breakdowns?

A. In total, yes.

Q. And that is indicated on the breakdowns appearing in Exhibit 200-C, is it not?

A. Yes.

Q. Now, would you explain the method you used in making a breakdown of these type of loans shown on Exhibit 200-A, for these three associations, that is Union of Lansing, First Saginaw and Saginaw?

A. The basis, it appears on schedule or Exhibit 200-B and it is prepared from 200-A and 200-C.

Q. In other words, you used 200-B to get the breakdown of the loan classifications used in 200-A?

A. Correct.

(1340) Q. For these three associations?

A. That is correct.

Q. And what kind of breakdown or allocation method did you use?

A. The percentage of each classification to the total in each case in which it was applied to the total that appears on Exhibit 200-A.

Q. With the exception of the computation inserted in these exhibits by Exhibit 200-B, these exhibits were all prepared from the original records of the savings and loan associations with the one exception that you noted?

A. That is correct.

Mr. Dexter: I would like to offer into evidence these exhibits with the understanding that the plaintiff would have the right to examine the original books and records of the savings and loan association from which these exhibits were prepared.

(1341) Mr. Klein: I would like to ask the witness a question about this.

This is merely as to the introduction. Looking at Exhibit 200, do I correctly understand this is a tabulation of conventional loans made by these associations in 1952?

A. Yes.

Mr. Klein: And that is in column A, that is the total amount of conventional loans?

A. That is correct.

Mr. Klein: Column B you show the total amount of loans with terms of ten years or less where the amount was 60 per cent or less of appraised value. In other words, both those conditions had to obtain before you reduced it down to that column B?

In other words, you didn't separate those which had a loan of ten years or less unless it also had an appraisal of 60 per cent or less. You combined both of those factors, didn't you?

A. If I understand your question—

Mr. Klein: In other words, if a loan were ten years or less but was based on an appraisal of more than 60 per cent, you wouldn't include it in there?

A. I would have included it.

Mr. Klein: You would have included it?

(1342) A. Yes.

Mr. Klein: But if it was less than 60 per cent, you would not have included it?

A. That is correct.

Mr. Klein: Even though it was ten years or less?

A. That is right.

Mr. Klein: In other words, it had to be ten years or less and it had to have an appraisal of 60 per cent of the appraised value?

A. Yes.

Mr. Dexter: In order that the record may be clear on this, I think that column B on Exhibit 200 shows the amounts where either the term was over ten years or the appraised value was over 60 per cent.

Mr. Klein: It is the other way around.

The Court: Let us find out. The witness at one time answered it, if I understood his answer correctly, as if it could be either/or, and at another time, if I understood his answer correctly, it had to be both. Let us find out which he meant.

Mr. Klein: It had to be ten years or less, didn't it?

A. Yes.

Mr. Kleir: And in addition, you put another (1343) condition that the amount of the loan had to be 60 per cent or less than the appraised value?

A. That is correct.

Mr. Klein: Both of those conditions had to obtain before you put it in column B? It had to be ten years or less and the loan had to be 60 per cent or less than the appraised value, is that correct?

A. Yes, I think it is correct. I really do. Maybe I misunderstood.

The Court: Suppose the term on one was nine years but the percentage of the appraised value was 70 per cent, would it be in here?

A. It would not be in here.

Mr. Klein: And if it was 60 per cent or less but the term was more than 10 years, it wouldn't be in there?

A. That is correct.

The Court: That is true. However, the heading is a little confusing.

Mr. Klein: It should be "and."

A. That is right, it should be "and," that is correct.

Mr. Dexter: Your Honor, it apparently should be "and."

The Court: We will then change that word or Mr. Dexter will change it and the record will show that he has changed it in open court. The heading of Exhibit 200, (1344) under column B in the second line in the last word there is "or" and it should be "and."

It now reads "or less and where the amount loaned was 60 per cent."

Mr. Klein: Did you make a tabulation of the amount of the building and savings loans which were ten years or less irrespective of the appraisal, of the loan to the appraisal?

A. I don't think I have that figure in total, but I certainly can get it.

Mr. Klein: You can get it?

A. I think I can, yes.

Mr. Klein: And do you have a separate computation of the amount of loans made by building and loans where the appraised value of the amount of the loan was 60 per cent or less irrespective of the term of the mortgage?

A. I don't know. I think we can break it up.

Mr. Klein: And do you have a breakdown of the terms of the loan, eleven years, twelve years, thirteen years, and so forth, or are you just interested in the ten year situation?

A. No, I don't have a breakdown of total loans.

Mr. Klein: You did not break it down if it was more than ten years; you made no separate computation whether it was more than—

(1345) Mr. Dexter (interposing): Your Honor, I believe that Mr. Klein is permitted to make an examination of the source of the information and what they used, but he doesn't need to go out and examine the witness in reference to what he did not do.

The Court: I think at this point—

Mr. Klein (interposing): That is correct. On that point, the objection is well taken.

Column C is the percentage of figure D to A, is that correct?

A. Yes.

Mr. Klein: What does D purport to show?

A. This is the percentage of construction to—

Mr. Klein (interposing): By category?

A. A to B.

Mr. Klein: How do you get only 6 per cent to the total? Shouldn't that be 100 per cent total of all classifications?

A. No, because actually you are figuring this to that, that to that, and so on. It will never come out to 100 per cent. They will not work out.

Mr. Klein: You have five classifications and five equals—that is all the loans, so shouldn't this equal 100 per cent?

A. No, you are figuring, so to speak, apples to oranges. It (1346) would never work out to 100 per cent. You see, in column B you have one millian six hundred seventy some thousand dollars.

Mr. Klein: Of dollars.

A. That is right, and that only amounts to I would say—this total here amounts to six per cent of this total, and for that reason—

Mr. Klein: (interposing) But you have got that 6 per cent under the column D. How is column D only 6.4 per cent when you have only five classifications? Why isn't that 100 per cent?

A. They just won't work out.

Mr. Klein: What are you comparing in column D?

A. I am comparing each classification.

Mr. Klein: You just pick out a figure and tell me—

Mr. Dexter: (interposing) Your Honor, he is cross examining the witness.

Mr. Klein: No, I want to understand this exhibit. I don't understand D at all.

Mr. Dexter: D, for your information, is captioned "The percentage of each category in column B to total

of column A." In other words, 1.9017 per cent of the total construction loans made by the 16 savings and loan associations in 1952 examined constituted loans (1347) that were both under ten years, ten years or under, and 60 per cent less of appraised value.

The Court: And were construction loans.

Mr. Dexter: And were construction loans.

The Court: I think that is plain enough.

Mr. Klein: OK.

Now, looking at Exhibit 200-A, do I correctly understand this is just a breakdown by associations getting the totals which appear in Exhibit 200-A?

A. Yes, in column B, 200.

Mr. Klein: All 200-A is is a breakdown by the associations to get your figures for 200?

A. Correct.

Mr. Klein: And the star, you said those categories weren't available on certain institutions?

A. That is correct.

Mr. Klein: But you nevertheless made your determination of percentages without that?

A. That is correct.

Mr. Klein: How did you do that?

A. On the basis of 200-B.

Mr. Klein: Well, what did you do there?

A. You notice here in column A, Exhibit 200-B, are the total loans made by this particular loan association.

Mr. Klein: Yes.

(1348) A. Column B represents a percentage of these classifications to the total loan of that association.

Mr. Klein: To the total loan?

A. That is right. In other words, construction to the total was 43.0804 per cent, and this 43.0804 per cent was applied to the total in column C.

Mr. Klein: What is column C?

A. Column C is the total loans, to which there was ten years or less and appraisal of 60 per cent or less. In other words, pick that total up from 200-A.

Mr. Klein: I thought you said you didn't have the figures available.

Mr. Dexter: Now—

Mr. Klein: (interposing) Let the witness answer, please.

A. The totals were available.

Mr. Klein: The totals were available?

A. Yes, sir.

Mr. Dexter: Your Honor, I think the trouble here, when you refer to the total, Mr. Splan, you are talking about the total of the loans involved in the particular category or caption of the exhibit, right?

A. That is true.

Q. (By Mr. Dexter): So when you talked about total loans, you meant the total loans of the association of the (1349) conventional type that is within this classification of under ten years, or ten years or under, or 60 per cent of appraised value or under?

A. That is correct.

Mr. Dexter: And those exhibits carry those captions, your Honor.

Mr. Klein: Your star, you say, "Breakdown of loans in both categories as to percentage of appraised value and term of loan, not available," is that correct?

Now, how did you build up—

A. (Interposing): No, no. This—

Mr. Klein: (interposing) We are referring to Exhibit 200-A for a minute.

A. That is true.

Mr. Klein: And then you say the allocation is computed on the basis of ratio of association total conventional loans made, and you refer to 200-B?

A. Right. That is true.

Mr. Klein: Now, how do you get the determination of whether it was ten years or more of appraised loans to value of 60 per cent or less out of 200-B?

A. Sir, we were able to examine the particular loans in the association. We were not able to see which classifications they fell into in these three particular instances, and this was the basis of this work sheet here.

(1350) Now, is he asking for the workup on this on the total? Is that what he is asking for?

Q. (By Mr. Dexter): I think the confusion, Mr. Splan, results from the fact that we are actually dealing with two classifications here. One is the classification of a loan according to its term or percentage of appraised value, and the other is a classification of a loan in terms of the purpose of the loan—that is, whether it is construction, purchase, refinance, improvement or other—and as to these three associations you have on Exhibit 200-B, you were able to determine from the books and records the classification of the loans in terms of the length of term of the loan and appraised value, were you not?

A. That is correct.

Q. But you were not able to break down those particular associations' loans as to the classification of purpose of loan—that is, construction, purchase, refinance, improvement and others?

A. That is correct.

Q. And then in order to make your Exhibit 200-A include all of the associations, you arbitrarily determined, did you not, that the percentage of total loans that fell within the classification of term or appraised value was the same as the total conventional loans; so if you had, for example, total construction loans of the Union Association here at (1351) \$1,580,825, you took

that \$1,580,825 and were able to break that down into the total of each classification of loan; is that correct?

A. Yes, sir.

Q. But you were not able to break down the \$39,100 figure on Exhibit 200-B into the construction, purchase, refinance, improvements or other classification, right?

A. That is correct, yes, sir.

Q. So that you arbitrarily broke that down in the same way that the books and records showed the breakdown of total conventional loans?

A. That is correct.

The Court: I understand your testimony. I don't know whether I understand the witness or not.

Mr. Klein: I would say it is as clear as mud at this point, as far as I am concerned.

The Court: I think I understand Mr. Dexter's testimony. I don't know whether he is familiar with the situation except by hearsay or not.

Mr. Klein: Did you get the figures on 200-B from the books of the Union Savings & Loan in this case?

A. Yes.

Mr. Klein: All the figures?

A. This total and this total (indicating).

Mr. Klein: You are pointing to (A) and (C)?

(1352) A. That is correct, sir.

Mr. Klein: But you did not get those figures on (B)?

A. No, sir.

Mr. Klein: Where did you get those figures in column (B)?

A. Those are computed. I computed them.

Mr. Klein: From what?

A. From column (A).

Mr. Klein: In respect to what?

A. To the total in column (A).

In other words, construction, \$680,400, is 43.04 per cent of 1 million 580.

Mr. Klein: All right. Where did you get the 16,000 figure?

A. The figure appearing here?

Mr. Klein: Yes.

A. In column (C), 33.04 per cent applied against \$39,000.

Mr. Klein: Where did you get the 39,000 figure?

A. We were able to work that figure up from the original books and records in that particular association, but we were not able to come up with these particular figures here within these five classifications, because they didn't have the books and records—that is, they didn't have the breakdown.

(1353) Mr. Klein: They are just assumed figures, then?

A. These five, yes, or column (C).

Mr. Klein: Anything in column (C) is assumed except the total?

A. That is correct.

Mr. Klein: But you couldn't get the breakdowns?

A. That is correct.

Mr. Klein: And how does that affect 200-A, then?

A. Well, again, the total, it doesn't affect the total here, only up in here, the classifications, and these totals here it would affect.

Mr. Klein: That is your classification.

(1354) We have no objection to the offering of these exhibits except, of course, we have not had an opportunity to check them and whether or not these books will be made available to us by the building and loan associations, I don't know.

Mr. Dexter: I will check and they will be:

.

Q. (By Mr. Dexter): Turning to Exhibit 200, Mr. Splan, what does that exhibit indicate?

A. (Pause.)

Q. Does it show that of the total conventional loans made by the associations in 16 associations listed on 200-C, that 6.4 approximately of their total loans were for a term of ten years or less or appraised value of 60 per cent, I mean, a term of ten years or more or an appraised value of more than 60 per cent?

A. You should reverse that, the term of ten years or less and an appraised value of 60 per cent or less.

Q. And that is what that percentage figure then indicates?

A. Yes.

Q. And it would show, then, that 6.4 per cent approximately is broken down to classification of the particular loans?

A. Yes, sir.

Q. Construction would show that 1.9 per cent approximately was the kind of loan that fell within these two classifications?

(1355) A. Yes, sir.

Q. And purchases was 1.25 approximately?

A. Yes, sir.

Q. Refinancing .78 per cent, and improvements approximately a half per cent?

A. Yes, sir.

Q. And others, now by that you mean other purpose loans?

A. Yes, sir, other purpose secured by real estate.

Q. And that would be one, or approximately two per cent. Now, turning to Exhibit 200-C, did you include

in the computation in 200 the loans there characterized as others, FHA Title I and Title XII?

A. No, sir.

Q. You did not include your FHA and GI loans?

A. That is correct.

Q. So that it is a breakdown of the total conventional loans by each association?

A. That is true.

Mr. Klein: It doesn't include Title I either?

Mr. Dexter: Title I is separate there, that is right.

Q. (By Mr. Dexter): And could you state by looking at the exhibits what portion of the Title I loans are to the total improvement loans? Would that be about 25 per cent?

A. Yes, I think it would be slightly less than 25 per cent.

(1356) Q. Slightly less than 25 per cent. I would like to show you, Mr. Splan, an exhibit marked 208-A, and will you explain that, please?

A. Exhibit 208-A is a consolidation of Michigan state taxes paid in 1952 by savings and loan associations for loans other than franchise tax, intangibles tax, examination fees, and tax on increase in authorized capital.

Q. And did you obtain those tax figures from the associations or from the official files of the State of Michigan?

A. Yes, sir.

Mr. Dexter: We will offer this, your Honor, subject to the plaintiff's right to check the accuracy.

Mr. Klein: No objection, subject to check.

The Court: Received.

Mr. Dexter: That is all, Mr. Splan, as long as the Court understands these exhibits.

Mr. Van Zile: Could I ask one question? That relates simply to mortgages that were made in 1952?

A. Yes, sir.

Mr. Van Zile: Not mortgages held?

A. No, sir.

Mr. Van Zile: Mortgages made.

The Court: That is the 200 series?

Mr. Van Zile: 200 series.

(1357)

Cross Examination

By Mr. Klein:

Q. Referring to Exhibits 200, 200-A, B and C on the Detroit & Northern, you have the Flint office only, as I understand?

A. Yes, sir.

Q. And the Union, the Lansing office only?

A. Yes, sir.

Q. Now, did I understand you to say you made a list of the term of loans above ten years, your work papers?

A. No, sir.

Q. Did you look at any that had ten years and six months?

A. Yes, sir.

Q. Did you make a list of them?

A. No, sir, nothing above ten years.

Q. And those that were eleven years?

A. No, sir.

Q. Those that were eleven and a half years?

A. No, sir.

Q. Or twelve years?

A. No, sir.

Q. That didn't even interest you?

A. No, sir.

Q. And did you make a separate list of those where the loans in ratio to the appraised value were 60 per cent or more but the mortgage, the term of the loan was ten years or less?

(1358) A. No, sir.

Q. That didn't interest you either?

A. No, sir.

Q. Did you make a computation of the interest rate on these mortgages? Did that interest you?

A. No, it didn't.

Q. It did not?

A. No.

Q. Do you recall all the interest rates?

A. Generally, yes.

Q. Some of them were six per cent, weren't they?

A. Yes.

Q. These building and loan mortgages, weren't they?

A. Yes.

Q. And did you make a computation of the term of the loan referring to Exhibit 200-C of the FHA and GI loans?

A. How do you mean, sir?

Q. Well, the term of the mortgage.

A. No, sir.

Q. You don't know whether they are fifteen, twenty or twenty-five years?

A. No.

Q. And did you make a note of the building and loan interest rates under those mortgages?

(1359) A. FHA, sir?

Q. FHA or GI.

A. No, sir.

Q. And getting back to Exhibit 200 where you are talking about the term of the mortgages, did you bother to make a computation of the average term of all of the mortgages of each—

A. (Interposing): No.

Q. You weren't interested in that, whether it was eleven years or twelve years or ten and a quarter years?

A. No.

Q. It could have been ten and a quarter years, couldn't it?

A. I don't know.

.

(1360) Q. (By Mr. Klein): Do you know if the average is more than ten and a quarter years of these loans?

A. No.

Q. You have no idea?

A. No.

Q. And you don't know whether the average loan to the appraised value was on the average, do you?

A. No, I don't.

Q. Did you say you could work that data up pretty quickly?

A. I don't know, sir.

Q. I think I asked you before about it, and you said you thought you could get it.

A. I couldn't on the total, no, sir.

Q. Could you by groups?

A. I don't think I could even do it that way. Frankly, I could try but I don't think I could.

.

Q. (By Mr. Klein): Did you make any notation if the mortgage (1361) was for more than a ten year term, did you make any notation of the term from your work papers?

A. No.

Q. And if the mortgage loan was more than 60 per cent of the appraised value, did you make any note?

A. No.

Q. You didn't make any notes at all?

A. No, sir.

Q. Did you make any notes where one condition applied but not the other?

A. Yes.

Q. Have you got that table here?

A. If they were both less than ten or less than sixty, I don't have it with me but I can get it.

Q. Well, the one or the other applies on this. The question is if the loan is for ten years or less but the amount of the loan was sixty per cent, was more than sixty per cent of the appraised value.

A. I wouldn't have that information.

Q. Or the converse?

A. No, sir, I wouldn't have that information.

Q. You don't have it?

A. I have the detail.

Q. You only have the detail for this limited exploration you made?

(1362) A. Yes, sir.

DOTY, ETHAN, A., was thereupon called as a witness on behalf of the defendants, and, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Dexter:

Q. Please state your name and present occupation.

A. Ethan A. Doty, Director of Building and Loan Division, Michigan Department of State.

Q. And how long have you been so employed?

A. As an examiner since 1937 to 1949, and as Director of the (1363) Division since.

Q. Has your office made an interpretation of the power of the state savings and loan associations to pay dividends from the savings and loans' reserve and undivided profits accounts?

A. Yes.

.

(1364) Q. (By Mr. Dexter): Let me ask you this, Mr. Doty: Is this (1365) interpretation involved in your office's administration of the Savings and Loan Division of the Secretary of State's office?

A. Yes, it is.

Mr. Klein: Under what section?

A. Section 24 of the Building and Loan Law, Act 50, Public Acts of 1887 as amended.

Q. (By Mr. Dexter): Would you give that interpretation, Mr. Doty?

A. The Building and Loan Division has interpreted the provision for the payment of the dividends under Section 24 that dividends cannot be paid out of anything else except current earnings, one exception being that in the case of liquidation or voluntary dissolution, shareholders would then have a legal claim to undivided profits reserve after the payment of all creditors and after the payment of all expenses of liquidation, but only then.

Q. Do you know how long this interpretation has been that you could not pay anything on savings share accounts out of reserves and undivided profits except earnings in a current period?

A. It was in effect when I joined the Division in 1937. Senior examiners at that time informed me that it had been the interpretation for many, many years prior thereto, and I have found in the files of the Division a general letter that was sent to all associations in 1933, in which a (1366) statement to that effect was made.

Q. And this interpretation was in effect in 1952?

A. That's correct.

Q. And do you know what the federal practice was in 1952?

A. My understanding—

Mr. Klein (interposing): Just a moment. Do you know?

Mr. Dexter: I asked him, do you know?

A. Yes, I know.

Q. (By Mr. Dexter): Could you state what that is?

Mr. Klein: How do you know, sir, may I ask?

A. By virtue of exchange of information between the State and Federal supervisory authorities, in which considerable fine details of supervision must necessarily be exchanged.

Q. (By Mr. Dexter): Would you now answer the question, Mr. Doty?

A. What was the question again?

Q. What was the Federal practice in 1952?

A. The same as the State; that dividends could only be paid out of current period earnings.

Q. Now, in 1952, what did building and loan association shareholders in Michigan receive on the withdrawal or redemption of their savings share accounts?

A. They received the principal balance plus credited dividends on the savings share account involved.

Q. That would be the exact amount they paid plus the credited (1367) dividends?

A. That is correct.

Q. Have you made an examination of Exhibits 36-A through 36-O introduced in this cause, the reports of the associations?

A. Yes, I believe those are the monthly reports for 1952 of the State chartered associations involved.

Q. And it is the 16 associations involved in this litigation?

A. I have to confine mine to the state chartered.

Q. Now, you recall that there is an item on these exhibits captioned, "Total withdrawable or free shares." Can you state what is the meaning of this caption?

A. Withdrawable or free shares is the term which applies to the saving share accounts of the shareholders, the principal and credited dividends of which may be withdrawn at any time upon request or upon application of the shareholder.

Q. A comparable caption appears on the annual reports filed by the Michigan Savings and Loan Associations with your office for the year 1952, which are Exhibits 37 through 37-P-1, for the associations involved in this litigation. Does that caption have the same meaning as the caption on the annual reports that you just referred to?

A. Exactly the same meaning as it appears on monthly reports and on the annual report.

Q. Now, again referring to Exhibits 37 through 37-P-1, what type of loan does your office require to be entered under (1368) the caption, "Construction Loans"?

A. All loans on which the association has made a prior commitment to disburse loan proceeds as various stages of the construction are completed.

Q. And are all such loans secured by a first mortgage on the specific property on which the home is being constructed?

A. Yes, first mortgage loans on real property.

Q. Referring again to the same exhibits, has your office examined the loans that are generally included in the term "other purpose loans," on such exhibits?

A. Yes, that is a normal part of the field examination.

Q. Do you have personal knowledge of the general findings of these examinations?

A. Yes, I review these examination reports.

Q. And did you review the reports for the year 1952?

A. I did.

(1372) Q. (By Mr. Dexter): Now, are all of the other purpose loans secured by real estate mortgages?

A. They are by first mortgage loans.

Q. I show you a document—

Mr. Dexter (To the reporter): Will you mark this (1373) as Exhibit 216?

(Whereupon a document entitled "Capital Turn-over, Years 1950, 1951, 1952, and '53" was marked as Exhibit No. 216 for identification by the reporter.)

Q. (By Mr. Dexter): I hand you a document, Mr. Doty, marked Exhibit 216, and ask you to identify that, please.

A. This is a schedule reflecting share capital turn-over for the nine state chartered associations, the share of capital turn-over for the years 1950, 1951, 1952 and 1953. It was prepared from the records in my office under my supervision on August 20, 1958.

Q. Now, are those records from which you prepared that exhibit, Mr. Doty, available to plaintiff for examination if they want to?

A. They are in my office and will be made available for inspection by the plaintiff.

Mr. Dexter: I would like to offer Exhibit 216 into evidence.

Mr. Klein: No objection.

The Court: Received.

Q. (By Mr. Dexter): Now, Mr. Doty, are you familiar with the character and purposes and practices of the Michigan savings and loan associations in the early 1930's?

A. I would say yes.

Q. And in the year 1952?

(1374) A. Yes.

(1376) Q. (By Mr. Dexter): Mr. Doty, could you state whether or not the business activities, the kind of thing that savings and loan associations do, has changed in any substantial way from 1937 through 1952?

A. In my judgment, there has been no substantive change in the character and operations of savings and loan associations since 1937 to and through 1952.

Neither has Section 1 of the Building and Loan law, setting forth the intents and purposes of a savings and loan association, been altered during that period.

Q. In other words, their basic purposes have been the same, to your knowledge?

A. To my knowledge, yes.

Q. And their basic practices have been the same, to your knowledge?

A. That is correct.

Q. And are they serving the same kind and class of people in terms of the business that they do?

A. They are.

Mr. Klein: Do you know?

A. Yes, I know. They are serving the needs of people who are applying for a home mortgage loan.

Mr. Klein: Do you know the economic classes of the (1377) people? Do you, Mr. Witness? Do you know what their income ratio is, their value, their net worth?

A. I have reviewed a lot of credit reports in the mortgage loan document files, and I failed to see there are any in there of great wealth.

Mr. Klein: All right.

Q. (By Mr. Dexter): And has there been any great substantial change in the wealth of these people from 1937 through 1952?

A. Not any more so than the normal increase in income that many classes of people have enjoyed during that period.

Q. Due to the raises of the standard of living and inflation?

A. Or otherwise.

Mr. Dexter: That's all.

Cross Examination

By Mr. Klein:

Q. Mr. Doty, do you know the term—that is, the term of mortgages—by years that was being granted by building and loan associations in 1937—that is, the term?

A. The customary terms of the mortgage loans in 1937, I would say, would average about twelve to fifteen years.

Q. And that was true in 1937 also?

A. Yes.

Q. And the interest rate?

A. Interest rates, of course, vary substantially from locality (1378) to locality.

Q. And the size of the mortgage?

A. The size of the mortgage also varies.

Q. What was it in '37, if you recall, and what was it in '52, if you recall, average, from your great knowledge as an authority on the subject? Do you recall?

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A. The question calls for a dollar answer, which I would prefer to consult my records before attempting to answer.

Q. (By Mr. Klein): Well, what is your best recollection? You have an expert knowledge. Do you have any recollection of the size of the mortgage granted in '37 as compared with '52?

A. I think maybe the average in '37 would probably approximate fifty-five hundred, and maybe sixty-five hundred, seventy-five hundred in '52.

(1379) Q. Now, as far as encouraging home ownership, is there any difference to a borrower on a home loan mortgage whether he gets a mortgage of the same term and interest rate from a savings and loan association than he would get from a commercial bank, assuming the same terms, the same interest rate and the same—

.

A. I have relatively limited knowledge of the operation of the banks as pertains to the mortgage loan business.

Q. (By Mr. Klein): Well, Mr. Doty, assuming an identical mortgage by a commercial bank as to terms, interest rate and monthly amortization, in your opinion is the borrower any more or less favored when he takes the identical mortgage from a building and loan association than when he takes it from the commercial bank under those facts?

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(1380) A. (Interposing): Did I understand you to say the terms were the same?

Q. I am assuming identical terms for my question here.

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A. Unless there is a decided difference in the original loan cost or service fees, I think the mortgage would be about evenly served.

Q. Whether he took it from the bank or from the savings and loan association?

A. Yes, factually and accounting-wise, expense-wise.

Q. And if the building and loan association in granting the mortgage predicates its granting the loan on value of the property, appraised value, and the financial worth of the mortgagor, and assuming the bank bases its granting of the loan on the same standard, is there any difference whether the mortgagor takes the loan from the savings association or the bank?

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(1381) A. Unless the savings and loan association offered a better amortization term—

Q. (Interposing): I am assuming the same. There is none, but if they are the same, there is no difference.

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Q. (By Mr. Klein): Will you go along with that answer, Mr. Witness?

A. I would say that the mortgagor would be the same either case.

Q. Now, I suppose in your position you have done a lot of reading on savings and loan associations, haven't you?

A. Yes.

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(1382) A. Yes, sir.

Q. And have you ever read anything, any articles, by Norman Strunk, Executive Vice-President of the United States Savings and Loan League?

A. Yes.

Q. And do you know of his general reputation in the business of savings and loan associations?

A. Yes.

Q. Is it good?

A. Yes.

Q. Is he an informed man on that subject?

A. I would say so.

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(1383) Q. (By Mr. Klein): My question is, Mr. Doty, do you from your knowledge of building and savings and loan associations in Michigan agree or disagree with the following statement of Mr. Norman Strunk, Executive Vice-President of the United States Savings and Loan League:

“The savers using the facilities of our institutions have a slightly higher income than those which typically use banks, though the differences are (1384) not significant.”

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A. Well, I would be inclined to disagree with Mr. Strunk.

Q. (By Mr. Klein): And do you also disagree with the witnesses from the building and loan associations in this very case (1385) you have testified as Mr. Strunk has indicated for the year 1952 about their own institutions?

Mr. Dexter: Your Honor, I don't believe that the witnesses have so testified.

Mr. Klein: I think so, and I will read you the parts, if you wish.

Q. (By Mr. Klein): Do you disagree with them?

A. I disagree with the statement that the savings and loan mortgagors—

Q. I didn't ask about the mortgagors. I said "savers."

A. Well, savers.

Q. Shareholders versus savings depositors in banks.

A. From my own observation of the character of savings and loan, savings shareholders are that they are not much different from anyone else engaged in a thrift savings program, whether it be in a bank or an insurance corporation or any place else that they are engaged in a savings activity.

Q. And in your opinion, as a man experienced in the savings and loan field, would you agree or disagree with the statement of Horace Russell, General Counsel, in his book on "Savings and Loan Associations," page 1, in which he says:

"The savings and loan association is frequently referred to as 'the poor man's bank.' However, it (1386) will be noted that the average account in them is higher than the average savings account in commercial banks, mutual savings banks or postal savings and is probably higher than the average cash of insurance policies."

Do you have an opinion on that, sir?

A. I could not form an opinion on that because I am not familiar with the average balance of a savings account in banks, insurance corporations and postal savings.

Q. Do you agree in your opinion on this subject, do you agree or disagree with the view expressed by Mr. Norman Strunk in an article appearing in April, 1954, Burroughs Clearing House, as to—

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(1387) Q. (By Mr. Klein): And the question that I would like is your opinion of whether or not, "we the building and loan associations have equipped ourselves on a nation-wide basis to serve the middle class"—

A. I wouldn't agree with that in its entirety for the simple reason that they have equipped themselves to service and serve the lower income group, the middle class or anyone else in need of home mortgage, home financing.

Q. In other words, they are equipped to handle anyone, they are interested in getting a mortgage from anyone who applies for a mortgage, isn't that correct?

.

Q. . . . Who has a credit and a piece of property that will come within their requirements.

A. They are in the fundamental business of making home mortgage loans, if that answers your question.

(1388) Q. And that is regardless of whether the borrower is a shareholder of that association or not?

A. The statute doesn't require that the borrower be a shareholder or savings account shareholder.

Q. Would you answer the question, please?

A. What was it?

(The question was read by the reporter.)

A. The borrower automatically becomes a shareholder of one share upon being granted a mortgage.

Q. Isn't that a membership and not a shareholder?

A. I would call it a shareholder, inasmuch as they are entitled to one vote for each mortgage so held.

Q. They don't get any dividends on that share, do they?

A. No.

Q. So they are not a shareholder in the sense of investing in the association?

A. They are not investing shareholders, no. They are mortgagor members with a voting privilege.

Q. Do you agree, in your opinion, with the statement of Mr. Russell that the rate of earnings on savings is a material factor in attracting savings to building and loan associations?

(1389) A. These very same people that Mr. Klein refers to—Norman Strunk, Horace Russell, of the United States Savings & Loan—have also written authentic articles and published them in this U. S. Savings & Loan News and the Legal Bulletin published by the United States Savings & Loan News, to the effect that dividend rate is not the sole item that attracts savings share accounts to savings and loan associations, and they have further stated that convenience of location, prompt and friendly service has been a bigger factor in attracting savers to the savings and loan association rather than the dividend rate itself.

A. This is to be my opinion, is it? Did it say "opinion"?

The Court: Yes. State your opinion.

A. I don't believe so.

Q. (By Mr. Klein): And in that respect, you disagree with the testimony of the savings and loan witnesses who appeared in (1390) this proceeding, do you not?

A. I will disagree with them, yes.

(1391) Q. (By Mr. Klein): Are you familiar, in your work with the savings and loan associations, with the fact that since 1934 the powers of commercial banks to make loans on residences have been greatly liberal-

ized both as to term of mortgage and amortization provisions?

A. I am not familiar with any changes in the banking code.

(1393) Q. (By Mr. Klein): From your knowledge of savings and loan associations in Michigan, do you know whether or not in the year 1952 as compared with the year 1937 and the in between years savings and loan associations faced keener competition for residential mortgage loans from commercial banks in Michigan?

A. I would say to properly answer that I would have to check the mortgages recorded in all of the seven counties in which Michigan National Bank operates and compare them to savings and loan associations in the same area.

(1394) Mr. Klein: Would you read the question.

And would you listen very carefully, Mr. Witness, and then answer.

(The question was read by the reporter.)

A. I would say not keener competition, but continued competition.

Q. Would you have an opinion one way or another about the views expressed in the Savings and Loan Annals of 1952 of the United States Savings and Loan League, page 253:

“Members of the committee on trends and economic policies reported that the competition of insurance companies was easier than in 1951 but that of banks and trust companies substantially keener.”

Do you have an opinion on that subject?

A. No opinion.

Q. You don't agree or disagree?

A. No.

Q. But in Michigan you don't think that applies?

A. I have no opinion.

Q. You just expressed an opinion a few minutes ago.

A. You will have to restate the question, then.

Q. I said between '37 and '52.

Mr. Dexter: Isn't this '51 and '52, Mr. Klein?

A. Yes.

Mr. Dexter: Wasn't the other question '37 and '52?

Mr. Klein: Yes.

.

(1395) Q. Mr. Doty, do you know what types of savers could invest in building and loan and savings and loan associations in Michigan, including the particular ones that we have been considering in 1937?

A. What type of investor?

Q. Yes. By type I mean individuals, corporations, fiduciaries, and so forth.

A. 1937, as I recall, all types could.

Q. What do you mean by all types?

A. Those you just mentioned.

Q. That is corporations, partnerships, fiduciaries, individuals; is that correct?

A. My memory serves correctly, I believe all of those could in 1937.

Q. And that was equally true in 1952?

A. Yes.

(1396) Q. Do you recall when it was that corporations were permitted to invest for the first time in savings and loan and building and loan associations in Michigan?

A. Offhand, no, I don't remember exactly when.

Q. Do you recall an opinion of the Attorney General in 1928 that mercantile corporations were not permitted to loan or invest moneys in building and loan associations?

A. The question was do I recall?

Q. Yes.

A. I don't seem to recall it at this moment.

(1397) Q. Do you know, Mr. Doty, when building and loan and savings and loan associations in Michigan were first permitted to loan money on commercial or mercantile properties as opposed to residential properties?

A. The state chartered associations are by virtue of the description in Section 1 limited to lending their funds on residential or as the language in section 1 uses homestead properties. Federal chartered savings and loan associations are permitted to lend on commercial properties and I believe that was a part of their original charters and rules and regulations back in about 1932.

Q. But the state associations are not permitted to loan money on such properties?

A. It doesn't contemplate lending on commercial properties.

Q. Do they in fact, do you know?

A. They in fact make an occasional loan on what is called a joint home and business property which the owner may have a business downstairs and occupy living quarters; homestead quarters upstairs or in an adjacent house on the same general parcel.

Q. Are you acquainted with the types of shares that the state associations may issue?

A. Yes.

Q. You are familiar with the optional savings share?
(1398) A. Yes.

Q. That is, as I understand it permits the member to invest at any time and in any amount, is that right?

A. That is correct.

Q. And he doesn't have to invest periodically, right?

A. That is correct.

Q. And it is not an installment type of share; is that correct?

A. Not specified for installment regular payments, no.

Q. Now, under Act 50 of 1870, that is the original building and loan act, it is true, is it not that the only type of share contemplated was an installment share, isn't that so?

A. That Act you refer to is Act 50 of 1887.

Q. I beg your pardon, but the original building and loan act.

A. To my knowledge—and I would like to verify this—the original Act 50, Public Acts of 1887 provides for three types of shares, installment savings shares, advance payment shares and fully paid shares rather than restricting it to only installment savings shares.

Q. Well, there is no use in arguing that point, but do you know when the optional savings share first came into being?

A. It was so many years ago and long before my time. I would have to consult the records. I know it has been a great many years ago.

Q. That is you don't know when it was?

A. Not exactly.

(1399) Q. You think it was long before 1937?

A. I would like to look at the records before I attempt to answer that. It might have been near 1937; it might have been slightly previous to '37.

Q. Now, are you acquainted with the old type association in which in order to borrow money, a person had to be an investor and subscribe to a number of shares equivalent to the amount that he borrowed, Mr. Doty?

A. Yes. If you refer to the old type sinking fund mortgage loan where that condition prevailed, I think I could say I am reasonably familiar with it.

Q. Didn't the original type of association, and by original type, I mean the type that was organized under Act 50 of 1887 contemplate that the borrower should subscribe to or be the owner of a principal amount of par value of shares equivalent to the loan which was bid off to him, isn't that true?

A. I don't recall ever reading anything like that in the original Act of 1887.

Q. Well, do you remember anything in the older type institutions that required the borrower to subscribe to shares of stock in the association?

(1400) A. Not to the extent you mentioned. Formerly, there was a share subscription to a nominal amount of shares, as I say, of a very nominal amount which theoretically and probably practically may have been a member of the association.

Q. Are you sure that this was a nominal amount in the early associations?

A. In my early experience with savings and loan, it was in a nominal amount.

Q. Well, what was your early experience, I mean, in point of time?

A. Well, around 1937.

Q. Well, you are not familiar then with what the practice was prior to 1937, is that right?

A. I have probably read it but I don't recall it at this time.

(1403) CARLSON, C. ARNOLD, was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dexter:

I would like to offer into evidence, your Honor, Exhibit 208, which is taxes paid to the State of Michigan for the year 1952 by the sixteen savings and loan (1404) associations involved in this litigation and the Michigan National Bank, including franchise or privilege tax, intangibles tax, examination fee, state unemployment tax, real property tax, personal property tax, tax on increase in authorized capital, and the use tax that was reported directly to the Department of Revenue by the savings and loan association that was licensed or those associations that were licensed under the use tax statute.

Mr. Klein: We will stipulate, your Honor, subject to our check that the figures contained in Exhibit 208 are correct. We wish, however, to point out or object to the exhibit to the extent that real property taxes are ad valorem taxes on the real estate to which both building and loan and banks are subject, national banks are subject, depending upon the value of the property in question owned by them, and the examination fees are fees for work done by the examiners in making examina-

tions. They are really not taxes in the sense of being taxes.

Neither of those two items in our opinion bear upon the issues in this case, but as far as the figures are concerned, we are willing to say all the figures are correct subject to our opportunity to check and point out any error.

The Court: This is received subject to the objection.

(1405) Mr. Dexter: Exhibit 209 we offer. It is entitled, "Data Summarized as of December 31, 1952, on the Following Named Institutions," and their names on the left-hand column, the sixteen savings and loan institutions brought in question here in this litigation, and showing the total assets, the total first mortgage loans and contracts in amount and percentage to total assets, cash and securities in amount and percentage to total assets and savings share accounts in amounts and percentage to total assets and legal reserves and other contingency reserves in amount and per cent to total assets, as well as percentage to total savings shares of these respective institutions, which consists of two pages.

Mr. Klein: We have no objection to 209.

The Court: Received.

Mr. Dexter: Exhibit 210 we offer in evidence, entitled, "Data on the Following Named Savings and Loan Associations Summarized as for 1953," which includes the sixteen associations we have involved in this litigation. It consists of two pages.

It shows a breakdown of each association as to—
(1406) a breakdown of the gross income of each association as to interest on mortgages and contracts, both in amount and percentage to gross income, total interest

income broken down as to amount and percentage to gross income, net income before dividends and reserve additions, the total amount of dividends, the net income before reserve additions and net income taxes broken down as to amounts and per cent to total assets and total tax burden broken down as to the amounts, the percentage to net income after adding back dividends to the savings and loan association's income and percentage to net income, the state franchise and intangibles taxes of these associations in amount, percent to net income after adding back dividends and percent to net income.

(1407) Mr. Klein: Your Honor, in respect to Exhibit 210, we are willing to stipulate that the figures there shown are correct subject to our check.

However, we object to the admissibility . . .

. . .

(1409) The Court: . . . So I will receive the evidence, but it will be subject to your objection.

. . .

(1410) Mr. Dexter: I would like to offer next an exhibit marked 211, which is entitled "Asset Analysis of Michigan National Bank as of December 31, 1952," which was taken from Exhibit 3, showing that 50 per cent of the assets of the plaintiff bank are in stocks and securities and 50 per cent are in other assets.

. . .

Mr. Klein: No-objection to 211.

The Court: Received.

(1411) Mr. Dexter: I would like to offer Exhibit No. 212 entitled, "Michigan National Bank, Data Summarized from Copy of 1952 Operating Statement," which has previously been introduced as Exhibit 205, indicat-

ing that the gross operating income of the plaintiff back in 1952 was approximately \$12 million, including interest income of approximately \$11 million and that it received 21.8 per cent of its total income from interest on mortgage loans and that it earned before federal income taxes for a \$10.00 par value of stock \$3.99. I mean after federal income taxes, \$3.99 and before federal income taxes, \$8.06.

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Mr. Klein: No objection to 212.

The Court: Proceed.

Q. (By Mr. Dexter): Have you stated your name, Mr. Carlson, for the record?

(1412) A. I did. I will state it again. It is C. Arnold Carlson.

Q. And your address and occupation?

A. Birmingham. I live in Birmingham, Michigan. I am a certified public accountant.

Q. Whom are you employed by?

A. I am with Peat, Marwick, Mitchell & Company.

Q. And where did you receive your training and education?

A. At the State University of Iowa. I received a degree of Bachelor of Science in Commerce.

Q. And did you prepare these exhibits that we have been discussing, that is Exhibits 208 through 212?

A. Yes, I did.

Q. Referring to Exhibit 208 at the bottom of the page, I noticed that the total taxes for the Capitol Savings and Loan Association and the Detroit and Northern Savings and Loan Association reflect those of all of the branches; why did you do that?

A. We did that because we found it impractical to attempt any allocation of those taxes to any specific branches.

Q. So you used the other total figures which you used in your comparative basis on the other exhibits involving the Capitol Savings & Loan Association?

A. In Exhibits 209 and 210, the total figures were also used relative to the various types of information on those two specific associations.

Q. Now, in making your tax comparison, did you include a total (1413) of state and local tax burdens based on the information submitted from the sources indicated on the bottom of Exhibit 208?

A. On Exhibit 208 is marked the letter (G) for caption "State Unemployment Tax, Real Property Tax and Personal Property Tax."

Q. I believe, Mr. Carlson, this is already in evidence, but you used the total in your comparative exhibits, the total tax shown on page 208, is that correct?

A. That is right.

Q. Now, referring to page 2 of Exhibit 209, could you state how the additions to the legal reserve and continuing contingency reserve item are recorded on federal income tax returns?

A. I will make this a general answer as to savings and loan associations. The additions to these reserves are deducted for federal income tax purposes, such additions being limited under certain provisions of the federal income tax law.

Q. Do they treat in the same way the earnings paid out on the savings share accounts, those permitted to be deducted in computing the federal income tax?

A. In other words, you ask whether the dividends paid to—

Q. Share account holders.

A. —are deducted for federal income tax purposes? They are.

Q. Turning to Exhibit 210, I notice it is stated that the operating data for—we will cross that out. Turning to (1414) footnotes 2 on page 210, it is noted that you did not include miscellaneous items in undivided profits and you state that these items do not have any material effect on operation. Would you explain that, please?

A. In our review—scratch that—in our taking of this information from the working papers at the Building and Loan Division, we did note various charges in credits to undivided profits which represented for the most part prior years adjustments and in all material respects would have no effect on the operation or ratios that haven't been determined.

Q. That was the reason for your exclusion of that?

A. Yes.

Q. Now, it is noted on footnote 3 of Exhibit 210, the Capital Savings and Loan federal income tax was \$13,250. Did you in the preparation of this exhibit find that any of the savings and loan associations involved in the preparation of this exhibit paid a federal income tax in 1952?

A. Well, our review again of these work papers indicated that no other association paid a federal income tax in 1952.

Q. Would you know the reason for that generally?

A. Well, under the federal tax law, as I stated previously, the reserves for contingencies, bad debts or whatever they may be called are in a sense a basis for the determination of taxable income. I will explain that further by stating as I have said that additions to such reserves are allowable (1415) to these reserves as long as these reserves do not exceed a certain maximum figure. In 1952, it is apparent from looking at these work papers that these other associations had no tax

for the reason that their reserves had not reached the maximum and consequently, the additions to the reserves was the same amount of the net income of the remaining income, remaining after dividends paid to the savings account shareholders.

Q. In other words, they had no taxable income for federal income tax purposes in 1952?

A. It would appear so from my review of these papers.

Q. That was because of the federal treatment of dividends paid on share accounts and because of the federal treatment of the reserves of savings and loan associations?

A. Yes.

Q. Now, on page 2 of Exhibit 210, there is a caption called "Percentage of Net Income After Adding Back Dividends."

Mr. Klein: What exhibit are you referring to?

Mr. Dexter: 210, page 2.

Q. (By Mr. Dexter): Now, is this percentage computed upon the figures under the caption on page 1 of Exhibit 210 entitled, "Net Income Before Dividends and Reserve Additions"?

A. Yes.

Q. Now, turning to Exhibit 211, it is noted that it contains an addition back of the sum of \$1,893,000, representing certain (1416) reserves. Would you state why this was done?

A. This was done to arrive at what might be termed a gross asset figure which later is compared to a gross asset figure of the savings and loan associations.

Q. In other words, in both instances, you included the reserves?

A. In both instances, the reserves are not deducted on the asset, from the assets.

Q. I see. And this was done to provide an asset amount for comparison in some other exhibits that you have prepared, Exhibit 213 which is not marked yet?

A. Yes, sir.

(1417) Q. (By Mr. Dexter): I would like to show you an exhibit marked 213 and ask you to identify that, please.

A. Exhibit 213 gives various comparisons relating to tax burden and other information as to the Michigan National Bank and 16 specific savings and loan associations.

Q. Now, is Exhibit 213 computations based upon the other exhibits that you have prepared that have been introduced in evidence? That is Exhibit 208 through 212?

A. That is right.

Q. And those are merely computations and comparisons made off the basic data contained in those other exhibits?

A. That is right.

Mr. Dexter: I would like to offer Exhibit 213 into evidence.

Mr. Klein: Your Honor, 213, may I ask the witness a question or two.

Am I correct in my understanding that in determining the tax burden, as you called it, you include all the taxes that appear on this other exhibit to which I objected in part?

A. That is right.

Mr. Klein: And to the extent that some of those taxes would be eliminated, to that extent the ratios would be different?

(1418) A. That is right.

Mr. Klein: Now, your Honor, I object to this exhibit

The Court: * * *

It is received as being a summary showing the tax burden according to defendants' theory of the case. Whether that is a proper theory, I do not decide, but it is received.

Q. (By Mr. Dexter): Mr. Carlson, included in the computation of taxes on the Michigan National Bank, did you include the total taxes paid as indicated on Exhibit 208-A, which is the taxes (1419) paid by the Michigan National Bank, including \$100,000 approximately of taxes paid on deposits by the bank on behalf of its depositors? That should be 208-B rather than A.

A. Included in 208-B?

Q. Yes.

A. I can refer to that in any case, 100 thousand on deposits.

Q. You included that in the taxes on the Michigan National Bank in computing—

A. (Interposing) Yes, the figure on 213 shows intangibles taxes of \$168,499.

Q. Which includes the share tax in question plus the tax on deposits?

A. There are two items on 208-B indicated, and one is 100 thousand on the deposit, and the other is 68 thousand on the shares.

Q. Now, in preparing Exhibit 213 you are not able to include any franchise fee on the Federal Savings and Loan Associations, is that true?

A. That is right.

Q. That was because they were obviously not subject to the tax in 1952?

A. What information I have, that is correct.

Q. Now, for comparative purposes did you make a calculation as to what that tax would have been and what your ratio here (1420) on the bottom of Exhibit 213 would have been if the federal associations had been subject to the same franchise tax in 1952 as the state associations?

A. I did make computations for these six associations, and the total tax for 1952 had they been subject to the franchise tax would have approximated slightly over \$15,000.

Q. And what would have that done to the ratio of the sixteen-specified savings and loan associations column under total assets?

A. Under total assets?

Q. That is the .046 figure. What would that have been changed to if this—

A. (Interposing) The .046 figure would have been changed to .055.

Q. In other words, identically with the ratio of tax burden on the Michigan National Bank using total assets as a measure?

A. Is that a question?

Q. Yes.

A. I won't say identically. As you can see, I only carried it three places.

Q. I mean to the three places it would be identical.

Mr. Klein: Your Honor, just so that there is no—I don't want to interrupt the questioning—I have a continuing objection to this whole line of inquiry. The comparisons as evidence is directly what the Supreme Court (1421) of the United States says may not be done. I again wish to call that to your attention.

The Court: The objection that Mr. Klein has made in connection with the exhibits may stand as to all the questioning along this line, and it will not have to be repeated to each question. It is understood it does apply to all your questioning.

Q. (By Mr. Dexter): I would like to hand you, Mr. Carlson, an exhibit marked 215 and ask you to identify that, please.

A. Exhibit 215 presents figures on certain assets of the Michigan National Bank and 16 specific savings and loan associations.

Q. Was that prepared by you?

A. Yes.

Q. And the source of the data is indicated on the exhibit?

A. That is right. It is taken from the financial balance sheet (1422) of the Michigan National Bank and the other information on schedule 209.

Mr. Dexter: I would like to offer Exhibit 215.

Q. (By Mr. Dexter): Now, from the Exhibit 215 do I understand from footnote 1 that the ratio of first mortgage loans on residential properties is 16.7 for the Michigan National Bank in 1952?

A. Let me see that again.

(1423) (The exhibit was handed to the witness.)

A. That is right, 16.7 per cent of total assets.

Lansing, Michigan,
(1426) Tuesday, October 21, 1958,
9:30 o'clock A.M.

Cross Examination

By Mr. Klein:

Q. Mr. Carlson, how long have you been associated with Peat, Marwick & Mitchell?

A. Approximately three years, slightly over three years.

Q. When did you say you graduated from school?

A. May, 1942.

Q. Mr. James Bartrop still the senior partner in your office?

A. He is the partner in charge in Detroit.

Q. He is the partner in charge of your Detroit office. And up to a short time ago, you were only an employee of that company; you were not a member of the firm; you were not a partner?

A. I became a partner of the firm July 1, 1957.

Q. About a year—

(1427) A. (Interposing): Little over a year ago.

Q. Now, looking at a copy of Exhibit 210, I see on the bottom of that exhibit, page 2, that there is a reference under note 1 that the operating data for state associations is taken from the building and loan division audit papers on file with the Building and Loan Division at the Secretary of State. What did you mean by audit papers?

A. What I mean by audit papers is these are the work papers of the State examiners resulting from their examinations of the records of those specific associations.

Q. You did not get these figures from reports of the associations themselves?

A. That is correct.

Q. It is only from the work papers of what an examiner interpreted those papers to be that you are reporting on Exhibit 210; is that correct?

A. I wouldn't say that.

Q. Well, did you check the original papers as filed by the building and loan associations?

A. You mean the original papers as filed by the savings and loan associations? Not in respect to operating data.

Q. Not in respect to operating data. You only got that from the work papers of the examiners?

(1428) Q. (By Mr. Klein): You looked at the work papers of the examiners?

A. I looked at the work papers of the examiners, which—

Q. (Interposing): And those papers are not a part of the public records of that office, are they, these work papers?

A. Of—

Q. (Interposing): The Secretary of State's department?

A. I'm not too sure I can answer. I think that is somewhat of a legal question.

Q. You did not check the books and records of the building and loan associations, either, in respect to any of this data, did you?

A. I did not.

Q. And that is in respect to all of the exhibits you testified to?

A. That's right.

Q. That's right, you did not look at the books of the building and loan associations?

A. I did not look at the books of the building and loan associations.

(1429) Q. Now, if you will look at this copy of Exhibit 212, and on the third line there is a heading—this relates to the Michigan National Bank—there is a heading "Interest on Mortgage Loans," the third line, \$2,597,000. That does not include, does it, some \$554,000 of annual income in 1952 from FHA Title I modernization loans, does it?

A. Just a moment. I might say this—

Q. (Interposing): Just does it or doesn't it? It is just a simple question.

A. Frankly, I'm not sure.

Q. Well, I will show you another sheet here. Looking at Exhibit 204, which has the operating statement of the Michigan National Bank for the year 1952, is it not true that the interest of \$2,597,000 is solely for mortgage loans?

A. That's what the statement says.

Q. And that is the figure you have?

A. That is the figure I used.

Q. And you do not have any portion of the income under installment loans which the testimony shows includes under our Exhibit 104 some \$554,000 of income for '52 from FHA Title I loans, do you?

A. This amount only includes that mortgage loan caption; that is correct.

Q. Yes. Now, if you were to add the amount of \$554,000 to the items shown on your Exhibit 212, you would get approximately (1430) \$3,001,000 of interest on mortgage loans and on FHA title I loans, would you not?

.

(1431) So if you add \$554,000 from the FHA Title I interest received by the Michigan National Bank in 1952 to your \$2,597,000, that gives you what figure, Mr. Accountant?

A. That approximates—

Q. Just add it up, please. Just put it on here, just add it up.

A. What was the other figure?

Q. \$554,000; add it to this other figure (indicating), and that is \$3,151,000, isn't it?

A. That is correct.

(1432) Q. And what percentage is \$3,151,000 of the gross operating income of the Michigan National Bank in 1952? Would you give us that percentage, Mr. Accountant?

A. I would say approximately 26 per cent.

Q. So instead of a figure of 21.8 per cent, we would have 26 per cent, roughly?

A. If you were to add those together.

Q. If we added those figures together. Now, similarly, looking at Exhibit 215, the second line, you have a figure of first mortgage loans and land contract under the heading of Michigan National Bank of 62 million and something; is that correct?

A. That is correct.

Q. That does not include, does it, an item of 7 million 719 thousand of FHA Title I loans made by the Michigan National Bank or held by the Michigan National Bank on December 31, 1952?

A. May I answer the question another way?

Q. Does it or doesn't it?

A. The way I computed this, I have added this figure from information on Schedule A of the loan discounts,

and I have picked up only real estate loans. That is the way I arrived at the figure.

Q. So it does not include that figure, does it?

A. If it is not in the real estate and loan caption, it does not.

Q. The testimony is it was not under the caption of real estate loans. It was under other installment loans. So if you added (1433) that figure of \$7,719,000 to the 62 million—what is that figure—95,000?

A. 75.

Q. Would you see what result we get on that?

A. What is that million figure again?

Q. 7,719,000.

A. Those two figures added together would total \$69,794,000.

Q. And looking down to the ratios, what percentage would the 69,794,000 bear to three hundred seven six ninety-four, the total assets. Would you figure it out, please?

A. Slightly over 22 per cent.

Q. You are sure of that?

A. I still get about the same percentage, little over 22 per cent.

Q. So it would be 22 per cent instead of the 20.2 per cent shown there if we include this figure?

If you were to add those two figures together.

Q. And then this last figure, remaining assets, would be about 27.6 per cent, wouldn't it?

A. It would be decreased by the same amount as the other was increased.

Q. All right. Now, Mr. Carlson, do you do general corporate accounting practice in your work as an accountant for Peat, Marwick & Mitchell?

A. Yes.

Q. And in that connection, you know what the rules of good (1434) accounting practice require, do you not?

A. In specific situations, yes.

Q. And given a corporation having gross earnings of \$4,000,000, roughly, in my case, and a provision or liability for Federal income tax of \$2,000,000 or more, in allocating the income to the stockholders' equity account, to-wit: surplus or undivided profit, does good accounting practice require you to first deduct the federal income taxes of \$2,000,000 from the \$4,000,000 gross income or not?

A. In determining the earnings to the stockholders' equity account, the income taxes would be deducted.

Q. Because it is a liability that must be paid by the corporation before he gets any equity in the earnings; isn't that true?

A. Yes, that's correct.

Q. Now, referring to your Exhibit 213, Mr. Carlson, you show under the Michigan National Bank an item marked "True Net Income," which is \$4,096,999; is that correct?

A. That's correct.

Q. And that figure is before deduction or provision for federal income taxes in excess of \$2,000,000, is it not?

A. That's right.

(1436) Q. . . . Now, do you have the amount of that provision for federal income tax of the Michigan National Bank for the year 1952?

A. According to one of the exhibits, it was slightly over \$2,000,000.

Q. Would you take the exhibit figure, please?

A. \$2,000,000—I believe—\$2,082,350.

Q. And would you deduct that from the figure of \$4,096,999, please?

(1437) * * * And that gives us a figure of what, sir?

A. \$2,014,649.

Q. Using that figure for a moment and comparing it with the tax items you have used in this exhibit, we have objected to them but using your exhibit for the minute, what percentage would you get instead of this figure of 6.9 per cent, about four lines from the bottom under the Michigan National Bank?

A. It is a long computation but approximately it is slightly over 13 per cent.

Q. Wouldn't it be double that or 13.8 per cent?

A. Just about, yes.

Q. Well, that is not 13. It is closer to 14 per cent, isn't it?

A. Yes, it is approximately double.

Q. A little more than double, isn't it?

A. 13.7 or 13.8.

Q. Well, 13.8—is that the figure?

A. Approximately.

Q. Let us put that down in pencil, 13.8 per cent. Now, Mr. Carlson, in determining the net income of a corporation or a corporate association organized under corporation laws, after deducting any provision for federal income tax, whatever it may be, you arrive at a figure of net income, don't you, available for allocation to the stockholders' account, equity account, isn't that correct, of undivided profits or surplus?

(1438) A. Well, speaking of corporations with capital stock, that is true.

Q. And that is what good accounting practice requires?

A. Yes, for a corporation with capital stock.

Q. And after that, if there is any and that is the income, is it not, the net income after taxes of that corporation for the year under those facts as I have stated them?

A. That figure would be the net income after federal income taxes.

Q. And that is the amount available either for allocation to the surplus or undivided profits account or for distribution to stockholders, isn't that correct?

A. Yes.

Q. In fact, doesn't good accounting practice generally require that the amount be allocated to the undivided profits or surplus account before you charge any dividend against those earnings?

A. That is the case of a commercial corporate type of corporation.

Q. That is the general practice in the case of building and loan associations, isn't it?

A. I cannot answer that. I cannot say.

.

(1440) Q. . . . Looking at Exhibit 29, which is the annual report of the Citizens Savings & Loan as filed with the Home Loan Board in the form that bears the Home Loan Board label, you see, do you not, on the fourth page under "Statement of Operations," under IX the item "Net Income before Federal Income Tax," don't you?

A. There is an item there, yes.

Q. And there is a figure there?

A. There is a figure on there.

Q. And then there is another place under line 40 marked "Less Federal Income Tax," isn't that correct?

A. There is a line there.

Q. And X is net income for the year after federal tax. There is a line, isn't there, for that?

(1441) A. There is.

Q. And there is a figure there, is that correct?

A. There is a figure.

Q. In this case there happens to have been no federal income tax because there is no deduction there?

A. There is a blank space on that line.

Q. Now, taking the next page, isn't there a heading called "Reconciliation of Undivided Profits or Surplus Account," Exhibit C?

A. There is such an exhibit.

Q. And on line 2 there is an item of net income for the year, which is item 10, of the exhibit preceding the operating statement, Exhibit B. Isn't that correct?

A. That is so marked.

Q. And then there is a 3-C, a reserve, isn't there, a federal insurance reserve, isn't there?

A. That is under a caption, under a heading.

Q. Yes, transfers to reserves, and then the balance is to dividends, isn't that correct?

A. It doesn't say balance.

Q. To dividends?

A. To dividends.

Q. The two items balance out, don't they, the reserve plus the two dividends?

A. Equals—

(1442) Q. (Interposing): Equals the operating income after taxes shown in the prior line.

A. It equals line 2 of the schedule.

Q. And that line 2 is the net income after Federal income taxes, isn't it?

A. It so refers back to the other schedule.

Q. And that figure, then, on the top of the line is to be deducted if there is anything remaining from the undivided profits and surplus at the beginning of the year, isn't it? There is a line there for it, isn't there?

A. Deducted or added.

Q. Deducted or added, whichever it may be, and then you get what the undivided profits or surplus of your savings and loan association would be at the end of 1952.

A. Not exactly, because there are some other adjustments farther down.

Q. All right, you get it up to that point, don't you?

A. Up to that point you get it.

Q. And the other adjustments are some other dividends paid, which are deducted or added. This is dividends received, isn't it?

A. That is an adjustment in the undivided profits account.

Q. So in the practice under this form, the first line provides for the undivided profits or surplus at the beginning of the year, does it not?

A. It is so indicated.

(1443) Q. And from this form there is provision for deduction of dividends from the net earnings after federal income taxes before determining what the surplus in undivided profits would be for this building and loan association for the year 1952, at the end of the year, wouldn't it?

A. There are several items.

Q. Yes, but that is one of them?

A. In these various lines you have stated.

Q. Yes. And that is in accordance with good corporate accounting practice, is it not?

A. I cannot answer that question.

Q. I am talking about general corporate accounting practice.

(1445) A. The way that question is stated relating to that particular exhibit in that reference—

Q. (By Mr. Klein, interposing): I didn't ask you in reference to the exhibit.

A. I have already answered the particular question in that category.

Q. Would you listen to the question again, sir. Would good accounting practice for corporate accounting, general corporate accounting, require the following steps, in allocating net income after taxes, after federal taxes, in showing the distribution to the undivided profits and surplus account:

One, the deduction of federal taxes, income taxes, from the net income before taxes. That is correct, isn't it? That is one step?

A. A deduction, yes.

Q. So that gets net income after Federal income taxes; is that correct?

A. For general commercial corporate accounting.

Q. Yes. And then that item is then transferred to the undivided profits or surplus account?

A. That net figure would go into the surplus, yes.

Q. Good accounting practice requires that?

A. In the case of a commercial corporation.

Q. And then if dividends are declared, they are deducted from the (1446) undivided profits and surplus account?

A. In the case of a commercial corporation.

Q. Yes. In other words, the net income of that corporation is the item after federal income taxes, isn't it?

A. The net income of the corporation is after the federal income taxes.

Q. And that procedure was what was followed, was it not, on Exhibit 49, the annual report form prepared by the Budget Bureau of the United States, Home Loan Board and cooperating state department, was it not?

A. The form so indicates, what you have read.

Q. And that procedure was followed in the accounting practice, was it not?

A. On the statement, 'X does show a caption "Net Income for the Year after Federal Income Taxes."

(1447) Q. . . . That is what is shown under line 10 as the net income of that corporation for the year after federal income taxes, is it not?

A. The line says "Net income for the year after federal income taxes."

Q. And then the next is a reconciliation of the undivided surplus account, and the first line is the balance carried over from the prior year, isn't it?

A. The line so indicates.

Q. And then there is added to that the net income of the corporation for the year 1952?

A. That line so indicates.

Q. And then there is deducted from that, among other items, the dividends paid during the year 1952?

A. There is a line for dividends.

Q. Yes. And then you get the reconciliation after other deductions?

A. Yes. There are further deductions on down the line.

Q. Yes. Now, if you were to look under the heading on 216 of 16 savings and loan associations, you have de-

ducted, have you not, an item—213, I beg your pardon. I misspoke myself. Referring to 16 savings and loan associations, and (1448) the seventh line down says “Net income”?

A. “True net income.”

Q. Now, that amount is \$1,375,000, isn't it?

A. That's correct.

Q. But you have deducted from the income of the associations, the dividends of \$3,190,000 paid during the year of 1952 to shareholders of those associations, have you not?

A. That amount deducted represents the dividends of the savings share accounts.

Q. Which was paid in 1952?

A. I assume they were, from the records I examined.

Q. So if you add that back, we have the income of the 16 associations before distribution of dividends to shareholders, do you not?

A. We have the income before the dividend.

Q. And that would be \$4,566,174, would it not?

A. Those two figures added together would be that figure.

Q. . . . Now, using that figure in determining your so-called comparison of tax burden to income, you would get instead of a figure of 10.2 per cent, one of 3.1 per cent, isn't that correct, sir?

A. That is right.

Q. So, to go back, if in the column, under Michigan National Bank (1449) you show the net income after federal income taxes which would be \$2,044,649, or thereabouts, and you have testified the ratio of tax burden to income would be 13.8 per cent, have you not—that is correct, isn't it?

A. The tax burden as indicated here?

Q. Yes.

A. Oh, including the real and other taxes.

Q. And noting the adjustment, we have indicated in the next column under the savings and loan associations, that is adding back dividends paid during the year, you would have a figure of 3.1 per cent, would you not?

A. If that were done, that would be the figure.

Q. So you would have a tax burden on the Michigan National Bank of 13.8 per cent and a tax burden on the associations of 3.1 per cent, isn't that correct?

A. Assuming the—

Q. (Interposing) Assuming those facts,

A. The conditions that you set out, that would be the case.

Q. All right. Now, let us go one step further to correct at least—well, again on Exhibit 213 in the ninth line down, interest on mortgage loans and so forth, since you have testified that didn't include FHA Title I, that 21.8 per cent becomes roughly 26 per cent, does it not?

A. Adding those Title I's, that would be approximately it.

Q. Now, looking at the next column on the savings and loan (1450) associations, on the heading "True net income of total assets to total assets and to gross income," if we make the adjustment of adding back the dividends paid so as to get the earnings after taxes but before dividends to shareholders, the line "Total Assets,"—that ratio would become instead of .9 per cent, it would become 3.0 per cent, would it not?

A. Well—

Q. Well, make your computation.

A. Actually, a computation came out to 2.9 per cent, approximating 3.

Q. And the next figure, comparison of net income to gross income, would be about 70 per cent, wouldn't it, instead of 20.4 per cent?

A. I get approximately 68 per cent.

Q. And these other ratios like ratio of franchise and intangibles tax to true income, that would be changed too, wouldn't it?

A. Assuming the adjustments that you talk about.

Q. How would that be changed? Could you figure that out, sir?

A. You are talking about now the 16 specific savings and loan associations?

Q. Yes.

A. And if you add back to true net income the dividends on the savings shares.

Q. That is right.

A. The ratio of the franchise and intangibles taxes to such an (1451) adjusted amount would be 1.6.

Q. It would be 1.6?

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A. That is the ratio to true net income of the franchise and intangibles taxes. That would be 1.6 per cent.

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Q. . . . What is this 5.2?

A. 5.2 is the ratio of franchise and intangibles taxes to the true net income.

Q. Adding back those figures, though, what figure would you have?

A. Adding back the dividend to that figure?

Q. Yes:

A. You get 1.6.

Q. You would have 1.6 instead of the 5.2, which is computed after deducting—

A. (Interposing) If such an adjustment were made.

Q. Now, if you adjusted the Michigan National Bank income to provide for the deduction of federal income taxes, looking at a comparable figure of the ratio of franchise and intangibles tax, that would just be about double, wouldn't it?

A. Approximately:

(1452) Q. That would be about 8.2 per cent as compared with 1.6 per cent, using those adjustments, isn't that correct, using those two adjustments?

A. If you deduct the income taxes from true net income, you arrive at an approximate \$2,000,000 figure, and, of course, the ratio of the franchise and intangibles taxes would be higher if such an adjustment is made.

Q. As compared with 1.6 per cent, if we add back the distribution of dividends to shareholders in the year 1952, isn't that correct?

A. If such an adjustment is made, that would be the ratio.

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Q. . . . Who directed you to prepare this table in the way it was prepared?

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A. No one told me to prepare it specifically in this form. The general set-up was done by myself.

Q. By whom were you employed in this case?

A. I believe we are employed by the Michigan Savings and Loan.

Q. Michigan Savings and Loan, and who from the Savings and Loan employed you?

(1453) A. We were engaged by the—I would say I suppose the acting secretary.

Q. Of the Michigan Savings and Loan Association?

A. Yes.

(1454) *Re-direct Examination*

By Mr. Dexter:

Q. Now, referring to Exhibit 210, Mr. Carlson, why did you use the examination or audit reports of savings and loan associations rather than the annual reports of the savings and loan associations to make your computations there?

A. As far as the state associations are concerned?

Q. Yes.

(1455) A. The December 31 statement of the state chartered associations did not contain operating information, consequently we had to get that from other sources, which was obtained from the work papers of the state examiners.

Q. In other words, the state examiners would prepare their work papers on multiples of six-month periods?

A. That is correct.

Q. And you were able to go back from those examination reports and get the breakdown of gross operating income for the year 1952 from that source?

A. That is correct.

Q. And it was not broken down in that particular way on the annual reports?

A. That information was not on the annual reports.

Q. And that is why you used the audit reports.

(1462) Q. (By Mr. Dexter): Mr. Carlson, I understand you do not consider yourself qualified in any way as an expert on savings and loan accounting?

A. Yes, because of the fact that my experience is limited. It is a relatively new field.

Q. Your testimony relative to accounting practices on cross-examination of Mr. Klein is limited to the general commercial corporation and not applicable to savings and loan associations?

Q. (By Mr. Dexter): Mr. Carlson, did you mean to testify in your testimony in regard to what is good accounting practices in savings and loan accounting?

(1463) A. I didn't testify to what was good accounting practice in savings and loan accounting.

Q. So that when you referred in your testimony to general commercial corporate practice, you were not making reference to savings and loan associations?

A. No. I was referring to commercial corporation practice.

Q. And you were not trying to classify savings and loan associations as being in that class?

A. No.

Q. Now, in preparing Exhibit 213, you included, did you not, the federal income tax not only for the Michigan National Bank, but for all savings and loan associations?

A. Included?

Q. Included it in your true net income before—

A. (Interposing) It is before income taxes.

Q. It is before income taxes for both the Michigan National Bank and the 16 savings and loan associations?

A. That is right.

(1464) Q. * * * Mr. Carlson, I think you answered yesterday that you had prepared some income tax returns, isolated instances, for savings and loan associations?

A. That is right.

Q. And did you testify that in preparing those returns you were familiar with the way the federal income tax was computed for those returns?

A. That is right.

Q. And did you not testify that in computing your federal income tax in determining net taxable income you deducted the dividends on savings shares the same as you would interest (1465) paid by a bank, for example, on savings deposits?

A. They are treated as ordinary deductions.

Q. In other words, they are treated as debt capital, the savings share account, for federal income tax purposes?

A. They are deductible in arriving at federal taxable income.

Q. And that would be consistent with including them within the concept of true net income for Exhibit 213?

A. Under the true income defined on this schedule, it assumes the same type of deduction, of course.

Q. In other words, you are including all interest income in the bank's income, are you not, on Exhibit 213,

the gross income of the bank, including all its interest income?

A. I have taken the bank's figure right off their statement.

(1465)

Re-cross Examination

By Mr. Klein:

Q. Mr. Carlson, do you have that federal tax statute here with you relating to the building and loan associations?

A. No, sir.

Q. And isn't it true that the statute provides that you may deduct distributions to shareholders in building and loan associations from net income as a means of lightening the impact of federal income taxes—

A. As you stated in those exact words I cannot answer that question.

Q. (By Mr. Klein): Well, can you give us any answer? Have you read the statute? Just a second. Have you read the statute that we are talking about?

A. Not recently.

Q. Can you give us the gist of the statute? Don't you first determine net income of the savings and loan associations under the form?

A. Under the federal tax?

Q. Under the federal tax form for building and loan associations. I am talking about the income tax form.

(1467) A. You are talking about the federal corporation return?

Q. Yes. You first determine net income, don't you, of the association?

A. The net income for a savings and loan—

Q. Go ahead.

A. —association, where they do not pay taxes is zero.

Q. The net income is on the form: isn't there a line on the form "net income"?

A. There is a line for net income, that is correct.

Q. Yes, sir, and then, there is a credit for distribution to shareholders, isn't there?

A. No.

Q. Do you have a form here?

A. No, I don't.

Q. You don't. How about the distribution of surplus up to twelve per cent; that is permitted, isn't it?

A. That isn't the terminology used.

Q. What is the terminology?

A. Generally speaking, you are deducting, you are making this reserve addition as they call it as a bad, in a sense, a bad debt deduction is what it is.

Q. It is from the net income and then you deduct it, don't you?

A. It isn't deducted from the net income.

Q. It is permitted by the special tax law giving special treatment for tax purposes, federal income tax purposes; to federal savings (1468) and loan associations, doesn't it?

Mr. Dexter: It includes—

Mr. Klein: (interposing) Would you please let me ask the question?

Mr. Dexter: You are telling him, Mr. Klein—if you are going to tell him, it includes all of the savings and loan associations.

Q. (By Mr. Klein): With that amendment, what is the answer?

A. I will answer the question this way—

Q. You answer the question the way it is asked.

A. I can't answer the way you asked it.

Q. Can you give me the statute, the gist of the statute?

A. I can say this: The net income on a savings and loan association—for savings and loan associations, on the federal income tax return where they have not received their twelve per cent is zero.

Q. It is because they are allowed credit, are they not?

A. No. I wouldn't call it a credit.

Q. They are allowed a deduction to use your term?

A. In arriving at the net income—

Q. For federal income tax purpose only.

A. They are allowed that deduction.

Q. For federal income tax purposes only?

A. Well, I can't say only; I say for federal income tax purposes.

Q. And they are allowed to deduct distributions to shareholders (1469) because the shareholders have to pay an income tax on their dividends, isn't that right?

Q. . . . You don't have any form here?

A. No.

Q. How recently have you made out these tax forms?

A. We made them out—

Q. I said you.

A. I made some out last January and February.

(1470)

Re-direct Examination

By Mr. Dexter:

Q. Now, referring back to Exhibit 213, Mr. Carlson, there you had included all of the taxes, had you not, that were stated thereon in your various comparatives.

Now, have you prepared the same comparisons in terms of the franchise tax on savings and loan associations and the intangibles tax on banks?

A. That is already on there, the total of the two. Those ratios are already on schedule 213.

Q. But what additional comparison did you make?

A. You mean what have I done?

Q. Yes.

A. Under this ratio of state and local taxes, as you see, the total tax burden in column 2 and under the 16 is 141 thousand. For another type of ratio presentation we have taken out the real property tax, the unemployment tax and the examination fee.

Q. And what would that change that 141 thousand.

(1471) A. Going across the three columns, I can give you new totals.

A. You see the 16 specific savings and loan associations, your Honor, and down at the bottom there is a figure of 141 thousand?

A. Now, from these totals on the bottom of this schedule I have now deducted the real property taxes, the state unemployment taxes and the examination fees.

Q. (By Mr. Dexter): And then what would that leave in those total figures?

A. Replacing the \$141,000 total would be an amount of \$76,107; replacing the \$98,000 figure would be an

amount of \$53,072; and replacing the figure \$42,000 would be an amount of \$23,035.

Q. And what do these new figures represent?

A. Well, these new figures then represent actually the total of franchise taxes, intangibles tax and personal property tax, and in one instance there the tax on increase in authorized capital.

Q. And what did the total of the Michigan National Bank taxes change to?

A. The Michigan National Bank total now would only include the intangibles tax, since we have removed the unemployment and the real taxes, which leave a total there of \$168,499.

(1472) Q. And that total still includes the intangibles tax both on the share accounts—

A. (Interposing) Well, it is the same as it was previously.

Q. And the previous intangibles tax included, did it not—that is, the figure of \$168,499—\$100,318.24 in intangibles taxes imposed on bank depositors?

A. That is on one of these schedules.

(1473) Q. That would be in schedule Exhibit 208-A, B?

A. That is as indicated on 208-B.

Q. And that on 208-B indicates that that amount on deposits was what figure?

A. One hundred thousand three hundred eighteen dollars.

Q. Twenty-four cents.

A. Twenty-four cents.

Q. So that amount of the 168,499 carried on Exhibit 213 was the tax on bank deposits?

A. And shares.

Q. The amount—

A. (Interposing) One hundred thousand is, that is right.

Q. All right, now, based on these new tax adjustments, did you work out the ratios indicated on Exhibit 213?

A. Yes, and here, again, I will start with the Michigan National Bank column.

Q. All right. What was the 6.9?

A. The 6.9 is now 4.1, as indicated below. In other words, the Michigan National column would be the same in both instances, since we had in these tax totals the same tax, and the .091 will be .055 now.

Q. And what other adjustments—

A. (Interposing): And under the sixteen specific savings and loan associations, the 10.2 figure would now be 5.5.

Q. What would the 3.1 figure be?

(1474) A. The 3.1 figure would be 1.7, and the .089 figure would be .048.

Q. And what would the 5.2 figure be?

A. Those aren't changed.

Q. Those are not changed, OK. Now, turning to the Penn State Savings and Loan, what would the adjustment there be?

A. The new figures would be instead of the 14.1, we would have 7.6.

Q. Instead of 3.6?

A. We would have 2.0.

Q. And instead of the—

A. (Interposing): .014, we would have .057. . . . Then of the six federal, the ratios would be changed; 6.3 would be 3.4; the 2.3 would be 1.2; the .067 would be .036.

Mr. Dexter: Now, I think the Court understands that these adjustments that Mr. Carlson has testified to are

just showing additional comparisons other than those shown on Exhibit 213.

(T475) The Court: He used the same figures for true net income as previously used above. They do not include Mr. Klein's re-figuring of that.

Mr. Dexter: That is right, just showing additional adjustments, taking into consideration different taxes.

Re-cross Examination

By Mr. Klein:

Q. Mr. Carlson, if you deduct the federal income tax from the Michigan National Bank and use that method of approach for the taxes you are considering, what is the figure you get?

A. If such an adjustment is made, the figure would be exactly the same as we had in the other instance, would be roughly 8.2, in the first instance.

Q. It would be 8.2 instead of 6.9 that you have got there?

A. I have given you a new figure on that now.

Q. Instead of 4.1, it would be 8.2?

A. That is right, approximately.

Q. I get you. And if you consider the savings and loan income before distribution of dividends to shareholders, what would your figure be? 1.7?

A. That is right.

Q. In other words, it would be 8.2 to 1.7?

A. Using those adjustments.

Q. Yes. And how would you adjust the next line, or wouldn't (1476) they be—

A. (Interposing): The one where the .089 is? That wouldn't be.

Q. How about the next one, true ratio—that is unimportant.

A. We have done that.

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SPLÁN, THOMAS, was thereupon recalled as a witness herein, and, having been previously duly sworn, testified further as follows:

Cross Examination

By Mr. Klein:

Q. Mr. Splán, I think you testified that you prepared Exhibits 200, 200-A, 200-B, 200-C. Is that correct?

A. That is right.

Q. And those relate to data as to the mortgages of the sixteen savings and loan associations involved in this case; is that correct, sir?

A. Yes, sir.

Q. What papers did you examine in connection with the preparation, let's say, of Exhibit 200 to start with? Just look at 200 first.

(1477) A. This exhibit here, sir, comes from 200-A and 200-C.

Q. What papers did you look at in order to prepare those exhibits?

A. The original papers at the savings and loan associations.

Q. What original papers?

A. It would be the ledger card, accounts receivable cards. It would be the loan register.

Q. They each have a loan register?

A. Yes, sir.

Q. Showing what?

A. Showing the name of the mortgagor, the account number assigned to him, the—

Q. (Interposing): Term of the mortgage?

A. In some instances, yes.

Q. What are the other instances? How did you figure the term of the mortgage?

A. It was always on the accounts receivable card.

Q. And the rate of interest?

A. Yes, sir.

Q. The balance, if any, owing?

A. Yes, sir.

Q. And each association had similar records?

A. Yes.

Q. Did you examine the original mortgage?

A. In some instances.

(1477½) Q. Did you examine the original mortgage notes?

A. Only occasionally, sir, not every one, no, sir.

(1478) Q. Who arranged for you to go to see the building and loan associations, to get this information?

A. Counsel, Mr. Dexter.

Q. And who else? Did you talk to Mr. Cummins about it?

A. No, sir. My work was always through Mr. Dexter.

Q. All through Mr. Dexter?

A. Yes, sir.

Q. And the building and loan people permitted you and had prepared for you these exhibits to see, did they?

A. Yes, sir.

Q. Did they themselves prepare tables for you?

A. No.

Q. You prepared them all yourselves?

A. Yes, sir.

Q. They had no records that they prepared in advance?

A. No, sir.

Q. And do you have your note papers from which you prepared these exhibits?

A. Yes, sir.

Q. Where are they?

A. They are on file over here at the office.

Q. Could you go get them and bring them over here, sir? I would like to have them examined.

A. Yes, we could.

(1479) Q. Would you do that? I asked Mr. Van Coevering yesterday if you would bring them over here to court. He may have forgotten them.

A. Yes.

Q. How long would it take you to get them, sir?

A. Half an hour.

Q. Half an hour? It is that far away?

A. Yes. I have got to walk over there and I can't walk too fast.

Q. And the other exhibits, those exhibits in the 200 series are the ones that are prepared from the records of the savings and loan associations?

A. Yes, sir.

Q. How long did it take you to prepare that work?

A. Oh, a couple of weeks, I guess.

Q. A couple of weeks? You went to each of the offices?

A. With the exception that was mentioned yesterday.

Q. And referring to Exhibit 200, 200-A, 200-B and 200-C, when were these exhibits completed?

A. Well, the typing of them, frankly, I don't know. I think it was just prepared recently.

Q. When did you do the work?

A. In September, sir.

Q. In September?

A. Yes.

Q. Had you been asked to do it in August or July?

(1480) A. I was asked the last week in August or the middle of the week in August. I don't recall. Some time in August. I had other work which I had to do first.

Q. And the savings and loan associations freely permitted you to examine these records?

A. Yes, sir.

Q. And from them, you prepared these exhibits?

A. Yes, sir.

Q. Well, I would appreciate if you could bring those papers from which your notes were made and from which these exhibits were in turn prepared to court because I would like to have them marked.

A. OK, sir.

• • • • •
(1501) The Court: • • • Here is the rule of law that I have adhered to: These summaries (Exhibits 200, 200-A, 200-B, 200-C) are admissible in evidence only if the original records are in evidence, provided their production in evidence is asked by the other side.

They have asked it. So, one of three things happens: Either you produce these records, including the mortgages and the appraisals by subpoena in evidence—the practical way that we are going to hold court will be worked out later—or you make them available without subpoena, or the evidence is stricken. One of the three.

Mr. Klein: Mr. Dexter had in mind—and I just overheard the conversation—of producing only such mortgages as fall less than ten years or with appraisals un-

der the sixty per cent ratio and we want to see all of the mortgages for '52.

We would be perfectly willing to take a sampling of a month across the board of each association and stand on that, whatever month is picked out and say that would be (1502) a fair sample of '52. It might save a lot of work for everyone. We are perfectly willing to limit it to a month, any month that is picked out and say that is a fair average and you multiply it by twelve or something and you come out about the same way and we will furnish the manpower and we will do it quickly. We will furnish as much manpower as needed and if the State wishes to have a man there, we have no objection. They can see anything in writing.

(1505) Lansing, Michigan, Tuesday, October 21, 1958.
1:30 o'clock P.M.

SPLAN, THOMAS, thereupon resumed the stand as a witness herein, and, having been previously duly sworn, testified further as follows:

Re-direct Examination

By Mr. Dexter:

Q. I would like to show you Exhibit 208-A, Mr. Splan, and refer you to the column under the heading use tax. Now, in reference to that column, what use taxes did you include there?

A. The taxes that were paid directly by this association to the State of Michigan.

Q. In other words, those associations indicating that they had use tax payments were those that were licensed under the Michigan use tax statute?

(1506) A. That is correct.

Q. Now, were you able to find any additional use tax for the other associations.

A. No, sir. If they buy out of state, they pay the use tax regularly to the fellow who is voluntarily licensed with the State of Michigan, and they expense the material that they buy, and naturally it becomes a large lot of work to dig it out. So for that reason we didn't do it.

Q. It is more or less included in the cost of tangible personal property?

A. Yes.

Q. Therefore, there wasn't any way you could break it out in 1952?

A. That is right.

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(1507) McNAUGHTON, ALAN, was thereupon called as a witness herein, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Dexter:

Q. And your address?

A. My address is Chicago, Illinois.

Q. Your occupation?

A. I am a certified public accountant. I am a partner of Peat, Marwick, Mitchell & Company.

Q. How long have you been a certified public accountant?

A. I have been a certified accountant for seventeen years.

Q. And how long have you been a partner in the firm of Peat, Marwick & Mitchell?

A. I have been a partner since September 1, 1956. Prior to that I had my own firm. It was merged into that.

Q. Would you state generally your educational background?

A. Yes. I am a graduate of Northwestern University, in Evanston, Illinois.

I have been associated in the savings and loan business for about twenty-five years; prior to that, in the banking business.

I have done some teaching, and so forth.

Q. Now, what do you mean you have been associated in the savings (1508) and loan business for about twenty-five years?

A. Well, I started in 1934 as federal examiner. I worked for the Federal Home Loan Bank Board. Subsequent to that, I went into public accounting and then organized my own firm.

Q. In the public accounting field, did you do public accounting for savings and loan associations?

A. That's right.

Q. And was that a great number of associations?

A. Well, over a period of years, I have done lots of them. Currently I think I do something like 600 of them in the country.

I happen to head up the savings and loan department of our firm, and over the years I have worked almost exclusively with savings and loans.

Q. In other words, basically that has been your specialty in your field of accounting?

A. Yes; and up until I merged my firm with Peat, Marwick, I worked in Illinois and Wisconsin primarily, but now it is all over.

Q. Have you done any testifying before Congressional committees in regard to tax problems of savings and loan associations?

A. Yes, I did. When Congress was proposing the legislation taxing the savings and loan associations, which came in in 1951, under the 1939 Revenue Code.

Q. That is taxation of such associations for federal income tax purposes?

(1509) A. That is right.

Q. And have you in your specialized work in the savings and loan associations field examined books and records and accounts of these various savings and loan associations?

A. I have a considerable number of them, but nowadays my work is generally administrative, but I think I could still do one if I had to.

Q. And you are familiar with the way that they keep their books and records of accounts generally?

A. Yes, sir.

Q. You are familiar with the way the savings and loan associations in the State of Michigan keep their books and records?

A. Yes. We have some clients in this state and I have a general observation, a general knowledge of the way they do it.

Q. And that would include the federal savings and loan associations in this state?

A. Yes.

Q. And the state associations?

A. Yes.

Q. Do you have any other particular qualifications that you would like to state in the savings and loan field which you have done?

A. Well, I think you have covered the situation admirably.

Q. You have examined reports from states of condition of the Michigan Loan association?

(1510) A. Yes.

Q. And have you prepared federal income tax returns for savings and loan associations?

A. Yes, not in the State of Michigan, but I have prepared federal income taxes.

Q. For savings and loan associations?

A. Yes.

Q. And do you know the current practice or the practice in 1952 in regard to those returns?

A. Largely so. It is the same as it was then. I don't attempt to keep up to date with all of the code numbers and that sort of thing, but in general I know the principles involved.

Q. That is the principles involved in the federal taxation for income tax purposes of savings and loan associations?

A. Yes.

(1512) Mr. Klein: Furthermore, I don't think this witness has testified that he has had any experience in determining taxes under our R.S.-5219. Have you, sir?

A. I have not.

Mr. Klein: Have you had any experience under the Michigan Intangibles Tax law that is involved in this case?

A. No, sir.

Mr. Klein: So you have no experience in this revised statute of the federal government, 5219?

A. That is correct.

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(1521) Q. (By Mr. Dexter): Based upon on your knowledge of the accepted accounting principles and your examination of the exhibits offered in evidence by Mr. Carlson, including this Exhibit 213, what is, in your opinion, the best method of comparing the tax burden on a share of bank stock with the (1522) tax burden on a share of a savings and loan association in relation to value?

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(1525) The Court: The objection is sustained on both grounds.

If you wish to make a separate record, you know how, but as far as I am concerned, on the general record the objection is sustained.

Mr. Dexter: I would like to make a separate record.

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(1527) Q. (By Mr. Dexter): Will you answer the question I posed you, Mr. McNaughton?

A. First, Mr. Dexter, I would like to have the Exhibit 213, the one I have is perhaps not correct, after all of the changes.

The Court: The exhibit was not changed.

Mr. Dexter: No.

The Court: There were some modifications made by testimony.

Q. (By Mr. Dexter): Forget all of the penciled notations, Mr. McNaughton.

A. Well, it seems to me that your question now, if we can get back to that, the question is the effect of the burden on the savings and loan, as compared with the

bank, and it seems to me that in the case we have here and it shows in Exhibit 213 that there is no material difference in the effect upon their operations.

Q. What would you use as a comparison of the tax burden between the burden imposed upon shares of National Bank stock or capital versus that imposed upon the savings share accounts?

The Court: Mr. Dexter, if I may interrupt you at this point.

I sustained the objection on both grounds, and one (1528) of them was that as to this point at least you haven't qualified this witness to testify with reference to any matters under Sections 5219 or under the Michigan Intangibles Tax Law.

I said you may make a special record and you may, but I still feel that you haven't, even if I should be convinced that you were right later on with respect to this measuring of the burden business, I still would feel that this witness was not qualified on the showing up to this time. I am not passing on his credentials except as far as the questions and answers up to this point are concerned; they show that he is an expert in the field of accounting of building and loan associations—period.

Mr. Dexter: Your Honor, maybe there is a little cross thought here. We are not trying to make a legal comparison.

Now, we are asking this person—

The Court (interposing): Well, I just wanted to put you on warning that if later on you are able to change my mind somewhat on this second question, as to whether the whole subject matter is open in view of the language of this statute, I still would feel that you had not qualified this particular witness in the matters that you are concerned with in having him testify.

Q. (By Mr. Dexter): Mr. McNaughton, you stated that you are (1529) familiar with the federal income tax law in its treatment of both national banks and savings and loan associations?

A. That is correct, and I think I know the effect of any tax, including the state tax, on the income of a bank or savings and loan or any kind—

Q. Are you familiar with Exhibit 213 which you have before you?

A. Somewhat. I looked it over and heard Mr. Carlson talk about it. Incidentally, I think that the proper ratio, if we are going to get a comparison, is the ratio of the franchise and intangible taxes to what Mr. Carlson calls true net income.

Q. Are you familiar at all with the Michigan Intangibles Tax statute?

A. Well, not the statute, no.

Q. I mean do you know how it applies to savings and loan associations?

A. Yes.

Q. Do you know how it subjects to tax the national banking associations?

A. I believe so. I could tell you what I think.

Q. Well, what do you believe it to be?

A. Well, I think that the tax on the savings and loans is based on the savings share accounts outstanding, one quarter of a mill or something. I have forgotten the rate. The banks are taxed, I believe, on their capital stock outstanding.

(1530) Q. Do you know at least the arithmetic of those taxes shown on Exhibit 213?

Mr. Klein: Does he know the rate against the bank shares, may I ask him that? I would like to get this—I

want to make an objection and that is why I want to know.

Mr. Dexter: This is on a separate record, Mr. Klein.

The Court: But still you are going to ask me to consider it and I think that counsel has the right to inquire as to the classifications of any expert witness.

Mr. Klein: Do you know the rate under the Michigan law and the national banks—⁶

A. (Interposing): I don't know the rate on either of them.

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A. That is right.

Mr. Klein: I object even on a separate record.

The Court: Well, I have told counsel that he has not qualified the witness and I feel the same way, that as far as I am concerned, his testimony will not be considered.

Mr. Dexter: I would suggest, your Honor, that we familiarize the witness with the Michigan statutes which are not any great burden to learn. He has the economic effects of them before him and I will call him for questions for a separate record at a later date.

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(1531) The Court: I don't like to invite you to make a separate record and then change my mind, but I might better change my mind than perpetuate an error.

It seems to me that you have a witness here that says he is not at all certain of two things. One is the rate and the second is the base upon which that rate is applied, and then you ask him to tell us as an expert where the burden is. Can such testimony be competent in a court of law? It doesn't seem to me it can. ⁶I think I will sustain the objection at this point.

(1532) Q. (By Mr. Dexter): I would like to ask you, Mr. McNaughton, this hypothetical question. * * * And this is still, your Honor, on the separate record.

Q. If the tax burden on national bank shares, capital account, is measured at five and a half mills and the bank deposits are subject to a quarter of a mill tax, and if the savings and loan associations pay a quarter of a mill tax measured by their share accounts and their reserves, and also the saving share accounts are subject to a one-quarter of a mill intangibles tax comparable to the bank deposits taxed, in your opinion does this constitute a proper tax comparative?

Mr. Klein: I object to the question. This witness has no basis. He is not qualified to answer the question. No showing as to his qualifications whatsoever. In fact, his qualifications on this subject, not to the field of accounting matters.

The Court: Sustained.

Q. (By Mr. Dexter): Are you familiar with the capital structure of national banks as compared to the capital structure of savings and loan associations?

A. Yes, sir.

Mr. Klein: You are trying to qualify this man, is that it?

What has been your experience with national bank (1533) accounting, sir, your own experience?

A. My own experience?

The Court: Let's proceed in an orderly manner. Let's have Mr. Dexter ask his questions, and before any expert testimony is asked, you may inquire as to his qualifications.

Q. (By Mr. Dexter): Now, Mr. McNaughton, in the accounting of the savings and loan associations, are different principles involved than in the accounting for commercial banks?

A. Yes, there are.

Q. And are you familiar with those accounting principles?

A. I believe so.

Q. Would you state what some of the differences are?

A. Well, a bank has capital stock—its capital or net worth set-up is much like any commercial company. It is composed of stock issued which cannot be redeemed except upon shareholders changing the by-laws and that sort of thing, and the surplus and reserves are created from the profits of the bank.

Savings and loan associations, they don't have the same kind of capital. They have savings share accounts which are open. Anyone can go in and buy them at any time. They don't stop them. And of course, there, again, they try to produce profits which go into their surplus and reserves the same as the banks, but there is a different distinction between the capital stock of any kind of a bank, of a national bank or (1534) state bank, as compared with a savings and loan association.

Mr. Klein: For accounting purposes you are only talking? You are only talking about accounting?

A. I am talking as an accountant.

Mr. Klein: And accounting principles. That was the question.

A. It was put to me on that basis.

Mr. Klein: And your answer is limited solely to that, isn't it?

A. Yes, sir.

Q. (By Mr. Dexter): And, Mr. McNaughton, is that not true as a matter of fact?

Mr. Klein: I object to that question. . . .

The Court: Objection sustained.

Mr. Dexter: Could we have the answer on the separate record?

The Court: Yes.

Q. (By Mr. Dexter): Would you answer that, please. (1535) Answer the question that you were just asked, whether this difference was a matter of fact also.

A. It is a matter of fact.

Q. Now, is that taken into consideration in any opinion that you might formulate in regard to comparing a tax burden on a savings and loan association with the tax burden on a commercial banking corporation?

A. Yes.

Mr. Klein: My previous objection is interposed. The witness is not qualified to make that kind of expert testimony.

The Court: Same ruling. Objection sustained.

Q. (By Mr. Dexter): In other words, you would use these distinct-accepted accounting principles in any analysis that you might have made in regard to the relative tax burdens on these institutions?

Mr. Klein: I object to the question on the same grounds as heretofore stated.

Q. (By Mr. Dexter): Answer the question, please.

Mr. Dexter: I assume it is on the separate record.

Mr. Klein: Just a minute.

The Court: I think, Mr. Dexter, I ruled a few moments ago, and possibly I have misled you or wasn't clear, that while I had previously suggested we put this in the separate (1536) record, you might do so if you wish, at least it seems to me that until you have qualified the witness as an expert on the subject, we should not even have a separate record here.

He just hasn't been doing anything in connection with banks, and yet you bring him here as an expert to testify on banks in these various connections.

He can testify as to anything on building and loan associations. I am not passing on the weight of the testimony, but he has qualified himself as being an expert on building and loan associations. But when you get talking about banks, how do we call a man who hasn't had anything to do with banking himself and expect him to talk as an expert on it?

Mr. Dexter: Your Honor, I asked him if it was based upon his knowledge of accepted accounting principles.

The Court: By what?

Mr. Dexter: And your examination of the exhibits offered in evidence by Mr. Carlson.

The Court: If examining those exhibits makes an expert, you and I are an expert, because we certainly examine them at great length and then cross examine.

Mr. Dexter: But the thing, your Honor, we are trying to qualify him as an expert on is having a knowledge of accounting principles of the savings and loan associations. (1537) I believe your Honor ruled that he has that.

The Court: And as to that, he can tell, if you want him to, how the intangible tax of Michigan imposes a burden upon them. I don't rule that it is relevant, but at least you can make a separate record.

But when he gets to talking as an expert as to how a burden is imposed upon banks, when he doesn't have anything to do with banks, or the Michigan Intangible Tax, or Section 5219, then I fail to see how you have got a qualified expert before us, and why we should litter up the record with that sort of testimony.

Q. (By Mr. Dexter): Mr. McNaughton, are you familiar with the accepted accounting principles involved in bank accounting?

A. Accounting principles for bank accounting are the same as general accounting principles, and I am familiar with them.

Q. In other words, you are familiar with the general accounting principles in commercial corporations?

A. That is correct, and if I were to go in to examine a bank, I think I could do it.

The Court: Well, a few moments ago the same witness, at your direction, or at your inquiry, testified that there is a difference between the accounting principles as applied to the banks and the principles applied to building and loans, and now he says that general accounting principles apply to banks.

(1538) Mr. Dexter: No, your Honor. He says general commercial corporations.

We do not concede that a building and loan association, nor neither does the witness, I believe, that the savings and loan associations are that kind of institution.

Q. (By Mr. Dexter): Is that what you meant by your testimony? You did not include savings and loan associations?

A. Well, I think perhaps I was wrong the other time. If you are talking about labels, that's another thing. If we are talking about principles, that is something else.

I think principles are principles. On the other hand, the label for something is something else again. Do you follow me?

The Court: Another thing, Mr. Dexter, how does the knowledge of accounting principles tell us about what the burden, the impact of these taxes upon a bank is?

Do you think that anyone that knows accounting principles can settle all these problems?

Mr. Dexter: No, your Honor. There is a question of what are the proper accounting principles to be applied in trying to make a proper economic comparative between a savings and loan association on the one hand, and a national banking association on the other.

Now, we may be completely wrong in this type of an approach to this lawsuit, I do not know, but as I said (1539) before, we believe that the discrimination is a practical question.

The Court: As to whether you are right or wrong on that, I said I thought you were wrong, but at any rate, you could make a separate record but nevertheless, it seems to me you have got to bring in somebody here, if he is going to testify as an expert, if you are going to say that this statute doesn't control us, that it is somewhat indefinite or ambiguous and open to question, and that the Supreme Court decision does not control us, particularly the Minnesota case, that that is open to something or other, there is a field here for opinion evidence, hasn't it got to come from a man who is the expert on the subject of banks? If you want him to testify what the burden of taxation on a bank is, hasn't it got to come from somebody who knows something about banks besides being a depositor, and so forth?

I shall sustain the objection to the witness testifying on any kind of a record.

If you want to withdraw him at this time and present him again tomorrow and see if he has really got some computations I should listen to, I am perfectly willing to be corrected. But as it is now, we aren't getting anywhere. We are just wasting time.

Mr. Dexter: All right, your Honor. We will withdraw the witness for now, and if we can mend those

fences (1540) that you find apparent, why, we will recall him.

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WOODWORTH, GEORGE WALTER, was thereupon called as a witness on behalf of the Defendants, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Dexter:

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Q: Your present occupation?

A. I am Professor of Finance at the School of Business Administration at the University of Michigan.

Q. Would you describe the undergraduate and graduate degrees that you have obtained and the universities where you have obtained (1541) them?

A. I was graduated from Kansas Wesleyan University in 1924 with an A. B. degree, from the University of Kansas with an M. A. degree, and from the University of Michigan with a Ph. D. degree in economics.

Q. And what was the date of your Ph. D. degree?

A. 1932.

Q. What teaching experience have you had?

A. I was instructor of economics at the University of Michigan between 1925 and 1930. I was Assistant Professor of Finance at the Amos Tuck School of Business Administration in Dartmouth College from 1930 to 1938. I was Professor of Finance at that same school, 1938 to 1952. I was Professor of Finance and am at the present time of the School of Business Administration, University of Michigan, since 1952.

Q. Do you have any affiliation with academic societies?

A. Yes. I am a member of the American Economic Association, the American Finance Association, and American Association of University Professors.

Q. What are your major fields of specialization as a professor of finance?

A. My main field of specialization is money and banking. I also teach investments.

Q. Do you teach management of financial institutions?

A. Yes, I have taught management of financial institutions.

(1542) Q. What experience have you had with the actual management of financial institutions?

A. My practical experience along those lines was in the capacity of trustee of the Dartmouth Savings Bank in Hanover, New Hampshire, from 1936 to 1952. I was also Public Interest Director of the Federal Home Loan Bank of Boston, from 1951 to 1952, and I was a consultant for a public accounting firm, Peisch, Angell and Company, with head offices in Norwich, Vermont, operating throughout New England, between 1943 and 1952.

Q. Now, have you written any articles or books concerning financial institutions?

A. I have, sir. I wrote "The Detroit Money Market" in 1932, a 221 page study of that market.

In 1937, with R. D. Milborne, I wrote "Principles of Money and Banking," a 513 page book.

In 1950 I published "The Monetary and Banking System," a 588 page book.

And in 1956, I published "The Detroit Money Market," 1934 to 1955, a 297 page book.

I have written articles along the way, but I can't recall the titles of them here at the moment.

Q. You have written various articles also concerning financial institutions?

A. That is right.

(1543) Q. And you are familiar with the financial institutions of savings and loan associations, mutual savings banks and commercial banks?

A. I am as an economist would be, a teacher of finance. My specialty, however, as I indicated, is money and banking, but in the course of teaching I have, as well as from practical experience with mutual savings banks and savings and loan associations. I think I know their economic function, how they fit into the whole financial system. That is more than I would know, small encyclopedic details about those institutions.

Q. Now, could you state what were the original purposes and functions of the national banking system?

A. Your Honor, with your permission, I shall read a large part of my testimony. I think it—

The Court (interposing): Well, is it responsive to the question? That is the main thing.

A. I will try to make it responsive to the question. I don't trust my memory on all the detailed facts that I have, and I think it will add to the order of the court procedure if I do read substantially—I don't expect to read all, but I would like to—

The Court (interposing): I assume what you are reading is your own?

A. That is correct.

(1544) The Court: Not from some textbook.

A. All this here is my own, which I have written myself.

Mr. Klein: * * * I object to it. I think it is not pertinent, not relevant, not material, doesn't bear upon the issue before us.

The Court: What is your theory, Mr. Dexter?

Mr. Dexter: In the first place, your Honor, I believe it bears materially upon the three facets of this litigation. One is are savings and loan associations the kind of institutions that are to be brought within the purview of 5219, and we believe, of course, that there is definite authority, as your Honor is well aware, that they should not be, but that is going to be considered.

Also, we believe that comparing those types of institutions with national banks and their functions and (1545) purposes historically and in 1952 is significant, and Mr. Woodworth is qualified to make this kind of comparisons from an economic point of view, and we believe it is material.

The Court: Bearing upon which one of these issues of which you speak?

Mr. Dexter: The first is the character and kind of institutions compared and contrasted—that is, savings and loan associations and commercial banks—and also the issue of the question of competition and the question of tax discrimination in an economic sense.

The Court: On the last, I will sustain the objection. I am somewhat in doubt as far as competition, but I can see how conceivably it might have some bearing in there.

Mr. Dexter: He is going to try and compare and contrast these institutions.

The Court: It seems to me it is more a question of whether they do compete in fact than as to whether one writing as an analyst as to what the proper place of each institution is in our financial picture may not be just the same as whether there is actually in fact competition. However, I can see conceivably there is some bearing on that.

On the other point, on the question of the tax burden I sustain the objection.

(1546) Q. (By Mr. Dexter): The first question, Professor Woodworth, was what were the original purposes and functions of the national banking system?

A. Analysis of statements of the founders of the national banking system shows conclusively that the original purpose was primarily to eliminate weaknesses in the monetary system, rather than to provide more adequate lending facilities for businesses and individuals. More specifically, the purpose was to provide the nation a safe and uniform currency that would circulate at par throughout the country, to provide safe depositories for the United States Treasury, and to create safe banks of deposit for businesses and the general public.

That the primary objective of the National Banking Act was a monetary one is evident from (1) the title of the act, (2) statements by Salmon P. Chase, Secretary of the Treasury, who was one of the most vigorous promoters of the plan, (3) Congressional debates on the bill, and (4) statements by the Comptroller of the Currency, the chief administrative officer of the national banking system. After the new banking system was in operation, speaking of each one of these in order, the title of the Act speaks for (1547) itself. I quote the title and Act, "An Act to provide a National Currency, secured by a Pledge of United States Bonds, and to provide for the Circulation and Redemption thereof."

With reference to the second point, statements of the Secretary of the Treasury, in his annual report to Congress in 1861, page 19, Salmon P. Chase, Secretary of the Treasury, commented on the proposed national banking system as follows:

"Its principal features are, first, a circulation of notes bearing a common impression and authenticated by a common authority, second, the redemption of these notes by the associations and institutions to which they may be delivered for issue; and, third, the security of that redemption by the pledge of United States stocks, and an adequate provision of specie. The notes thus issued and secured would, in his judgment, form the safest currency which this country has ever enjoyed; while their receivability for all government dues, except customs, would make them, wherever payable, of equal value as a currency, in every part of the Union."

With reference to the third point, the Congressional discussions, Senator Sherman from Ohio, member of the Committee on Finance who presented the Sherman Bill, labelled Senate No. 486, to the Senate, spoke on February 10, 1863, as (1548) follows:

"Now, sir, what benefits do the people derive from this system? They would have a currency that would be safe, uniform, and convertible. They would have all that can be desired in any community; a currency limited in amount, restrained by law, governed by law, checked by the power of visitation, checked by the limitation of liabilities, safe, uniform, and convertible in every part of the country."

That quotation is taken from the Congressional Globe, Part I, 1862-1863, page 844, and with reference to the Comptroller of the Currency, subsequently to the formation of the national banking system, in his annual report of 1866, which is given in the United States

Treasury Report for 1866, page 75, Mr. H. R. Hulburt, Acting Comptroller of the Currency, stated:

"In conclusion, I have only to state that the national banking system is now fully inaugurated, and in successful operation. The first bank was organized in June, 1863. There are now in active operation 1,647, with an aggregate paid-in capital of \$418 million which is owned by 200,000 stockholders. The system has the confidence of the people, because it furnishes a circulation secured beyond any contingency, and is popular because it furnishes a currency of (1549) uniform value in all parts of the country.

"It has superseded all existing state banking systems. It places the entire control of the currency in the hands of the Federal Government. It has proved during its three years of existence a most important auxiliary in the financial operations of the Treasury Department."

Q. Why was the primary emphasis on this monetary reform by the founders of the National Banking System?

A. I should say, sir, that the primary emphasis on monetary reform by the founders of the National Banking System grew out of the chaotic state of the currency during the period following the failure to renew the charter of the Second Bank of the United States in 1836 and extending to the establishment of the National System.

Between one thousand and sixteen hundred state chartered banks issued notes of different designs and sizes, and worst of all these notes varied in value from worthless to par.

Senator Sherman stated before the Senate that there were over seven thousand genuine kinds of notes in 1862 and some six thousand six hundred kinds of counterfeits. Mr. Sherman made that statement in a speech before the Senate February 10, 1863, quoted in the Congressional Globe; Part 1, 1862 to '63, page 84.

Moreover, the notes of sound banks were discounted (1550) more and more heavily as they strayed farther from the point of redemption. Merchants had to subscribe to currently published bank note dictators listing values of notes and giving assistance in spotting counterfeits. Bank failures with their crippling losses to note holders and depositors were so numerous and widespread that public confidence in banks all but disappeared.

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(1551) The Court: * * * I can't help but agree as a lawyer and judge with counsel's objection that this has any bearing upon any issue in this case. You may make a separate record. I won't prevent you. And I should rather enjoy sitting here listening to it, but I shall not find a great deal of meat in it so far as deciding the issues I have to decide. I will find a lot of meat insofar as history is concerned.

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(1553) A. Do you wish me to proceed as I was?

Mr. Dexter: Yes.

A. The preceding sentence, in order to get the continuity, bank failures, with their crippling losses to note holders and depositors, were so numerous and widespread that public confidence in banks all but disappeared.

For examples, there were 28 banks in Michigan in 1839, but by 1843 there were only 2, and in 1848 and

1849 there was only one bank; the number of banks in Ohio dropped from 37 in 1840 to 8 in 1844 and 1845; the 19 banks in Kentucky in 1851 were reduced to 4 in 1853; the number in Tennessee declined from 26 in 1833 to 1 in 1851-1857. These references are quoted from the Annual Report of the Secretary of the Treasury, 1876, pages 222 to 228.

The lack of safety of banks was not only a drain on (1554) business and consumers, but was also a serious obstacle to Federal Government finance. Since the Treasury could not safely keep deposits in the banks, the Acts of 1840 and 1846 established an Independent Treasury System with subtreasuries in leading cities. Under these acts the treasury could receive taxes and other receipts only in specie and Treasury notes, and public funds had to be kept in its own treasuries.

This arrangement caused periodic disturbance in the money and capital markets, owing to the periodic withdrawals and outpayments of specie reserves. In addition, the Treasury could not rely on the banks to assist in its debt management operations—that is, borrowing, redeeming securities, refunding securities, and so on.

The founders of the national banking system contemplated that national bank notes would become the only currency, aside from coins, as soon as the emergency issue of United States notes, popularly called the greenbacks, could be retired in the years following the Civil War.

In his annual report in 1862, pages 17 and 18, Salmon P. Chase, Secretary of the Treasury, after pointing out the objections to permanent issuance of United States notes, stated:

“The central idea of the proposed measure is the establishment of one sound, uniform circulation, of equal value throughout the country.

(1555) "It seems difficult to conceive of a note circulation which will combine higher local and general credit than this. After a few years no other circulation would be used."

Similarly, in a speech before the United States Senate in support of the national banking bill, Senator Sherman stated:

"We are about to choose between a permanent system, designed to establish a uniform national currency based upon the public credit, limited in amount, and guarded by all the restraints which the experience of men has proved necessary, and a system of paper money, without limit as to amount, except for the growing necessities of war. The issue of Government notes can only be a temporary measure, and is only intended as a temporary measure to provide for a national exigency."

Q. (By Mr. Dexter): Were there any other functions contemplated by the founders of the national banking system?

A. Yes, I think there were. In addition to these monetary functions that I have just referred to, the founders of the national banking system contemplated that national banks would do a general banking business. The most important secondary function was making loans. Loans to one interest were limited to 10 per cent of capital, and the rate charged on loans could be no higher than the rates permitted state banks in (1556) the state of location.

It was contemplated that loans would be principally of a short-term, self-liquidating nature, as evidenced by the prohibition of loans secured by real estate mort-

gages, except to safeguard pre-existing debts, in the amended Act of June 3, 1864.

Q. Now, were there any important economic changes after the enactment of the national banking system?

A. Yes, there have been.

Q. And up to 1952, could you state what some of those changes were?

A. Well, I should say first that the national banks provided a large part of the currency until 1935, when national bank notes were redeemed by issuing national banks. In fact, national bank notes were the dominant component (usually 30 per cent to 40 per cent) of the currency between 1866 and 1914, when Federal Reserve notes became the most important component of the currency.

Mr. Dexter: I assume, your Honor, that the answer to that question was on the regular record—it is the period up including 1952—with no objection to the question.

The Court: Well, this wasn't offered on the regular record, and counsel had no opportunity to object unless he interrupted.

Mr. Dexter: Well, I would like to offer it on the (1556½) regular record.

(1557) The Court: We may consider that from now on, from the last preceding question on, we are on the general record and counsel may object if he feels it improper.

Q. (By Mr. Dexter): I would like to hand you, Professor Woodworth, (1558) an exhibit marked 219 and ask you if that illustrates some of these changes that you have made reference to?

A. Yes, it does.

Q. Did you prepare Exhibit 219, Professor Woodworth?

A. I did.

Mr. Dexter: I would like to offer Exhibit 219 in evidence as part of Professor Woodworth's testimony.

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(1559) Q. . . . Will you explain, Professor Woodworth, what Exhibit 219 is?

A. As the title indicates, it is to be generally described as selected assets and liabilities of all national banks in the United States on selected dates since 1865.

Q. Is there indicated on the exhibit the source of the information?

A. All the sources of data appearing on this exhibit are given at the bottom of the table, sir.

Q. And this exhibit was prepared by you personally?

A. That is correct.

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Mr. Klein: Your Honor, may I ask Mr. Dexter (1560) to state what the purpose of this offer of this exhibit is?

Mr. Dexter: To show the nature of the banking business, the change in its development throughout the period from the enactment of 5219 through 1952, and there is also on the separate record that data after the date December, 1952.

We think it germane, your Honor, the question of the business of banking in terms of any question of substantial competition.

Mr. Klein: May I ask some more questions?

The real estate mortgage data, does that relate to new mortgages issued by the banks?

A. It relates to the amount of real estate mortgages outstanding on the dates given.

Mr. Klein: But it doesn't give which are new and which were pre-existing?

A. No, it does not.

Mr. Klein: And you have no data on that?

A. I have no data on that. This is simply an exhibit to show—

Mr. Klein (interposing): The balance sheet condition at different dates?

A. That is right.

Mr. Klein: It merely shows balance sheets of all of the banks as a whole in the United States?

A. All of the national banks.

Mr. Klein: In Michigan or in the United States?

(1561) A. In the entire United States.

Mr. Klein: On various dates?

A. On various dates.

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The Court: It is received.

Q. (By Mr. Dexter): You stated, Professor Woodworth, that there were some important economic changes after the establishment of the National Banking System up to 1932, and would you state what some more of those changes were?

A. The second one also shown on Exhibit 219 is that the use of check book money which we more technically call demand deposits developed rapidly after the Civil War; whereas the amounts of currency and check book money were about the same at the outbreak of the Civil War, there were over three adjusted demand deposit dollars for one currency dollar by 1900 and the ratio rose to about above six to one in 1929-1930.

The national banks have provided between 49 (1562) per cent and 58 per cent of this check-book money in the United States since 1875.

Q. And does Exhibit 219 show that information?

A. It does.

Q. Now, would you describe the process by which national banks create check book money?

A. I will try to do so, sir. The creation of this check book money is probably the most distinctive function of national and other commercial banks, as compared with all other financial institutions, including savings and loan associations and mutual savings banks. Demand deposits are created and I underlined created when national banks increase their loans and investments. For example, if Michigan National Bank has an excess legal reserve balance of \$100.00, it is in position to loan a customer \$100.00 but the customer needing the money to pay debts soon draws checks for approximately the amount of the newly created deposit of \$100.00. These checks are then deposited by the payees, let us say, in the Old Kent Bank in Grand Rapids. Old Kent then has both demand deposits and legal reserves increased by \$100.00 and is in position to lend the amount of the excess reserve which is the \$100.00 less the legal reserve requirement on the \$100.00 deposit.

Assuming a twenty per cent legal reserve requirement, this would be \$80.00, but the borrowing customer would soon draw checks to pay debts again. These checks would be (1563) deposited in other banks, say, in Manufacturers National Bank of Detroit, which would increase both its demand deposits and its legal reserves by \$80.00. Manufacturers is then in position to lend the amount of its excess reserves or \$64.00, thus creating \$64.00 of new demand deposits.

This process which has in these three steps created new deposits of \$100.00 plus \$80.00, plus \$64.00, a total of \$244.00 can proceed in successive steps until \$100.00 of excess legal reserve originally in the hands of Michigan National Bank has been widely disbursed and fully utilized in support of the newly created deposits.

On our assumption of a legal reserve requirement of twenty per cent, this amount of new deposits would be \$500.00. That is 100 twentieths times the original \$100.00 excess reserve.

If the legal reserve were ten per cent, the amount of new deposits could be \$1,000.00, that is 100 tenths or ten times the original excess reserve of \$100.00 possessed by the Michigan National Bank.

If the legal reserve were fifteen per cent, the amount could be \$667.00; that is 100 fifteenths of the \$100.00.

Q. Now, is there any other way that the commercial banks can create money?

(1564) A. Well, the hundred dollars of excess legal reserve of the Michigan National Bank with which we began this illustration could come to it in various ways, if that is what you have referred to.

It could have gained this legal reserve from other commercial banks by the daily clearing and collection of checks that would have been passed around existing legal reserves, one bank to another.

It could have been because currency deposits came into the Michigan National Bank, people in the community not requiring quite so much currency. If so, that would have built up both their deposits and their reserves, and they might have had the hundred dollars of excess reserves come into them in that fashion.

Perhaps more important, Michigan National Bank might have derived a hundred dollars of legal reserve balance by borrowing at the Federal Reserve Bank of

this district, the Federal Reserve Bank of Chicago. If they had borrowed a hundred dollars, that would be the basis of this multiple expansion of demand deposits called creation of check book money.

Well, I could mention one more, if you wish, and this is exceedingly important in the monetary system. The Federal Reserve authorities take the initiative in flowing out more reserve money's to the banks, taking it away as a matter (1565) of general monetary management, and if the Federal Open Market Committee had purchased hundred dollars of United States Government securities, they would have passed out one hundred dollars more of this legal reserve money that would land in the commercial banks, and it might have been the Michigan National Bank and been the starting point of this process that I described.

Q. Can other financial institutions and savings and loan associations and mutual savings banks create check book money?

A. No, there is no other financial institution, no other individual in our whole social system or economy who can create money in that sense. They can only use the money that comes to them in the course of their business and spend it. They can use existing money, but they do not create money.

Q. Now, Professor Woodworth, are there any other changes that you think significant since the enactment of the National Bank System up to and through 1952?

A. Well, I should say that it is important that time and savings deposits were relatively unimportant to the banks until after the First World War. In fact, legal reserve requirements of national banks made no distinction between demand and time deposits before the Federal Reserve Act of December 23, 1913 and mid-year

1915, time deposits of national banks were only 10.9% of total assets, and in 1919 this ratio was 13.4%.

(1566) Q. Have you prepared a table or exhibit to illustrate that, Professor Woodworth?

A. I have prepared such an exhibit.

Q. I would like to show you an exhibit marked 218 and ask you to identify it.

A. Yes, I identify that.

Q. Did you prepare the exhibit marked 218 yourself?

A. I did, sir.

Q. Does it indicate the source of the physical information appearing thereon on its face?

A. It does.

Q. And what does it show? Does it show the proportion of time deposits to total assets of all national banks in the United States on selective dates?

A. It does.

Mr. Dexter: I would like to offer Exhibit 218 in evidence in connection with the Professor's testimony.

Mr. Klein: No objection.

The Court: Received.

Q. (By Mr. Dexter): Referring to Exhibit 218, would you illustrate the changes indicated thereon in this time deposit money?

A. Time deposits and other savings accounts were held mainly by other financial institutions that were legally permitted to make real estate mortgage loans. That is, mutual savings banks, savings and loan association, including cooperative (1567) banks and state chartered banks and trust companies.

The fact that national banks were legally prohibited from making residential real estate loans until 1916 and that close legal restrictions made such loans impractical

until 1927 was the main reason that national banks left the deposit business for other specialized institutions.

Q: Any other significant changes?

A. I would add that time and savings deposits business became more important to national banks after 1927 when legal restrictions on making real estate loans were liberalized. By 1930 the ratio of total time deposits of individuals, partnerships and corporations reached 27.5% of total assets of all national banks. Since that time, however, this ratio has declined, standing at 20.4% in June 1952 as shown on Exhibit 218.

Q. Were real estate loans relatively important to national banks after the First World War?

A. Real estate loans were relatively unimportant to national banks until after the First World War. As indicated above, national banks were prohibited from making such loans until the Federal Reserve Act of December 1913 permitted mortgage loans on farm land, but the maturities not exceeding five years.

Mortgage loans on urban property were prohibited until September 1916, when the National Bank Act was amended to permit such loans, with the maturities not to exceed one year, and I would refer there to the Federal Reserve Bulletin, (1568) September 1, 1916, page 441, amendment of Section 24.

But these restrictions were so onerous that at mid-year 1919 real estate loans of national banks were only nine-tenths of 1% of total assets.

Section 24 of the Federal Reserve Act was amended by an act approved February 25, 1927, which extended the maximum maturity of urban mortgage loans to five years, but the total of such loans was limited to 25% of capital and surplus, or one-half savings deposits, whichever was higher.

With this liberalization such loans of national banks expanded to 5.1% of total assets in 1930.

Q. Professor Woodworth, have you prepared a table illustrating this change in the real estate loans of all national banks in the United States?

A. I have prepared such a table:

Q. I will show you, Professor Woodworth, an exhibit marked 220 and ask you if that is such a table?

A. That is the table, sir.

Q. Was that prepared by you?

A. It was.

Q. And does the table indicate the source of the data you have used on the exhibit?

A. It does.

(1569) Mr. Dexter: I would like to offer in evidence in connection with Professor Woodworth's testimony Exhibit 220.

Mr. Klein: Subject to our checking the sources, we have no objection to the exhibit, sir, 220.

The Court: It will be received on that condition.

Q. (By Mr. Dexter): Now, Professor Woodworth, with Exhibit 220 before you, would you continue with the testimony you were giving about the real estate loan significance?

A. I will, sir. The preceding comments and those that follow pertain to Exhibit 220.

Further liberalization of Section 24 was made in the amendments approved June 24, 1934, and August 23, 1935, which permitted a national bank to make real estate loans not to exceed 60% of appraised value of the property and for a term not longer than ten years, provided the schedule of amortization payments was

sufficient to retire 40% of the principal within ten years.

Reference for that statement is Federal Laws Affecting Banks as of January 1, 1936, pages 194, 195, a publication of the Controller of the Currency.

Federal Housing Administration insured loans provided for in the National Housing Act of 1934 were not subject to these restrictions, as indicated in 1948 Statute 1246-1934, USCA 1701-1733.

(1570) These amendments also raised the aggregate limit on real estate loans, including FHA's, of a national bank to the amount of capital and surplus or 60% of its time and savings deposits, whichever was greater.

Under these more liberal provisions and the Veteran's Administration Real Estate Loan program provided in the Servicemen's re-adjustment Act of 1944 the proportion of total real estate loans of national banks to total assets rose to 7.6% in 1952, as shown in Exhibit 220.

Q. Were there any other significant changes?

A. I might comment on the bond investment and other security investments of all national banks, principally in the form of United States Government securities, rose markedly in amount and in proportion to total loans and investments after the 1920's.

At the end of 1929 the investments were 42.6% of total loans and investments. By the end of 1940 this proportion rose to 57.7%, and by the end of 1946 it increased further to 72.9%.

After the Second World War, total investments declined to provide funds to meet expanding demands for

loans, and by the end of 1952 the proportion to total loans and investments had receded to 55.1%.

(1571) The percentages in this paragraph were calculated from data provided by the annual reports of the Controller of the Currency 1930, page 34; 1941, page 9; 1946, page 4; 1952, page 12.

It should be noted, however, that holdings of tax exempt securities increased substantially during the postwar years. A large decline took place in holdings of United States securities.

Q. What was the status in the business of national banking in 1952?

A. I would begin by saying in answer to that question that the primary function of national banks in 1952 remained as it was in the beginning a monetary one.

First, the national banks provided 56% of check-book money, otherwise known as adjusted demand deposits, in the United States at the end of 1952, the money with which over 90% of total money payments is made in the United States.

That is shown in Exhibit 219 which you possess.

Second, national banks performed the monetary function in 1952 of receiving on deposits, paying out, clearing, collecting and transferring on their books over one trillion dollars of check-book money, about three-fifths of the total money payments in the United States.

Third item under monetary functions, the national banks provided very important currency services to customers (1572) by keeping on hand a stock of the different denominations, paying out currency on demand, and receiving it on deposit.

Fourth, the national bank served as depositories of the federal government, holding at the end of the 1952 3 billion 252 million dollars, which was 62% of the treas-

ury's total balances of 5 billion 259 million held by commercial and savings banks on that date.

For that information I refer you to Federal Reserve Bulletin, July 1953, page 736, and the annual report of the Controller of the Currency 1952, page 12.

Next, the national banks performed a number of other less important monetary services, including purchase and sale of foreign exchange, purchase and sale of domestic demand drafts, issuance of customer's checks, certification of customer's checks, sale of traveler's checks, accepting time drafts drawn on them under letters of credit or otherwise, collection of demand and time drafts for customers, holding legal reserve balances of commercial banks that are not members of the Federal Reserve System, and the mutual savings banks, and holding primary reserve balances of all types of commercial banks. Those are the monetary functions as such.

The next items I might mention are largely non-monetary.

(1573) Q. These are what you have considered the primary functions of national banks in 1952?

A. That is correct. The primary function I conceive to have been a monetary one; a secondary function involving loans and investments and other activities, which I would be glad to comment on if you desire.

Q. Now, would you state, then, what you believe to be what I might refer to as the secondary functions in 1952?

A. Well, the national banks were important in the field of time and savings deposits, holding 23 billion 118.5 million at the end of 1952. This represented 23 per cent of their total deposits of 99 billion 257.8 mil-

lion. For that, I refer you to the Annual Report of the Comptroller of the Currency, 1952, page 12.

These deposits—that is, time and savings deposits—of 23 billion 118.5 million represented 35 per cent of total time deposits in the country, which were 65 billion 799 million at that time, and 27 per cent of combined time deposits and savings and loan shares, which combined amount was 84 billion 994 million. For the reference, I indicate the Federal Reserve Bulletin, July, 1956, page 722.

(1574) Q. * * * Would you continue with this comparative, please?

A. I might comment on the liquidity requirements. The liquidity requirements of national banks were larger than those of any other type of financial institution at the end of 1952, unless it would be certain state chartered commercial banks. This was a consequence of the fact that 77 per cent of their deposits were payable on demand, and that the rest of their deposits (time and savings) were in fact demand or near-demand obligations. Primary reserves, consisting of cash, balances with other banks, legal reserve balances, and cash items in process of collection on the above date amounted to 26 billion 399 million. The source of that figure is from the Annual Report of the Comptroller of the Currency, 1952, page 12, or 24.4 per cent of total assets in this non-earning form.

In addition, they felt obliged to hold liquid secondary reserve assets of 25 billion 31 million in the form of marketable United States Government securities maturing in five years or less—another 23.2 per cent of total assets on (1575) which yields were low in view of their features of highest quality and ready marketability.

The reference for this figure on secondary reserve assets of 25 billion 31 million is Board of Governors of the Federal Reserve System, Member Bank Call Report, No. 126, page 6.

Q. Now, did you consider the loan and discount business of national banks as a secondary activity in 1952?

A. Secondary to the monetary function, yes, and a very important function, but secondary to the monetary function.

Q. Would you explain what that is, please?

A. The loan and discount activity?

Q. Yes. Explain its condition in 1952.

A. Loans and discounts of national banks, representing the money capital distribution function, were 36 billion 521.4 million at the end of 1952, or 33.9 per cent of total assets of 107 billion 830.4 million dollars. The reference for those figures is Board of Governors of the Federal Reserve System, Member Bank Call Report, No. 126, pages 3 and 6.

Q. And does that indicate how the loans were distributed by types?

A. It does. The loans were distributed by types as follows:

Commercial and industrial loans were 16.9 billion, which was 46 per cent of the total loans.

Loans to farmers were 1.9 billion, which was 5.2 per cent of the total loans.

(1576) Loans secured by stocks and bonds were 1.5 billion, or 4.1 per cent of the total loans.

Real estate loans were 8.2 billion, or 22.5 per cent of total loans.

Loans to consumers were 7.1 billion, or 19.5 per cent of total loans.

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A. All other loans are thrown in one category, which amounted to a little less than 1 billion dollars, or 2.7 per cent of the total loans, the total loans being 36 billion 521.4 million.

Thus, you see loans to businesses and farmers accounted for 51.2 per cent of total loans, real estate loans for 22.5 per cent, and consumer loans for 19.5 per cent, and the remaining 6.8 per cent consisted of security loans and this catch-all category of all other loans.

Q. Would you make reference to the investment securities in 1952 by national banking associations?

A. Well, the investment securities of the national banks, including the secondary reserve asset item of 25 billion 31 million that I mentioned earlier, and longer term funds amounted to 44 billion 176.3 million at the end of 1952, or 41 per cent of total assets.

(1577) Q. Now, referring to 1952, were savings and loan associations similar to national banking associations?

A. I should say they were not.

Q. Were they similar to any other financial institution?

A. Yes, I should say savings and loan associations were quite similar to mutual savings banks.

Q. What are the basic similarities between mutual savings bank and savings and loan associations?

A. Well, I can mention several similarities. I would say, first of all, that both institutions were from the beginning organized as mutual thrift associations without shares of capital stock, in contrast with private business and commercial banking corporations whose capital stock was owned by a separate group seeking to make a business profit.

In the second place, both institutions had their beginnings in the 18th and early 19th centuries to meet the

need for thrift or savings facilities for the emerging class of small savers.

The first real mutual savings bank was established at Ruthiwell, Scotland in 1810, and was known as Henry Duncan's Bank. The idea spread to the United States, where the first mutual savings bank, The Philadelphia Savings Fund Society, was begun in 1816 and incorporated in 1819. The reference for this historical material is from W. H. Kniffin, a book entitled *The Savings Bank and Its Practical Work*, published (1928) by Bankers Publishing Company in 1928, pages 6 to 10 and 16 to 18.

The origin of the savings and loan type of association is usually traced to Birmingham, England, where a Building Society was organized in 1781. The first such association in the United States was founded in Frankford, Pennsylvania in 1831. The reference for that statement is American Savings and Loan Institute Press, a book entitled *Savings and Loan Principles*, published in Chicago in 1957, pages 23-24.

* * * By accumulating the rivulets of savings of thousand and tens of thousands of families into one pool, these savings could in turn be lent for productive purposes—chiefly to finance home ownership.

Thirdly, I should say that both institutions have always stood ready to accept thrift accounts from small savers; that is, their facilities have been non-exclusive and not for a restricted group—except that both have frequently limited the maximum amount of funds acceptable from one person.

Fourth, both institutions gave evidence of the amount of savings of each customer in a savings account on

their books and in a savings passbook or other similar record retained by the customer.

Fifth, there has come to be little difference in substance between the deposit debt accounts to customers of (1579) mutual savings banks and the capital share accounts of customers of savings and loan associations as the situation has evolved.

In both institutions the real protection to savings customers is the sound value of loans, investments, cash reserves, and other assets administered by the management, buttressed by a fund of surplus and other equity reserves accumulated from net earnings retained in the business.

In the event of failure of either type of institution, the only protection for savings customers is the value of assets, if insurance of accounts be disregarded. A customer can realize no more than his proportionate share of the net liquidation value of the insolvent institution, whether his evidence of savings takes the form of a deposit debt or of savings shares.

(1580) Moreover, since 1934, the share accounts of all federal savings and loan associations and the bulk of those of state-chartered associations have been insured by the Federal Savings and Loan Insurance Corporation, \$5,000 per account before 1950 and \$10,000 per account since that time.

At the end of 1952, assets of insured associations were 86.7 per cent of total assets of all savings and loan associations, and at the end of 1957 this proportion had increased to 92.2 per cent.

Reference for that figure is the United States Savings and Loan League, Fact Book, 1958, page 87.

This means that even though the customer's evidence of amount of savings is the form of savings shares, the dollar amount of the account is insured. This in effect

transforms the savings shares to the status of an obligation of the Federal Savings and Loan Insurance Corporation.

In addition to its own resources, this corporation is empowered by law to borrow up to \$750 million from the United States Treasury if such borrowing is needed to meet insurance liabilities.

In view of these protective features and the no-loss record of insured savings shares since the Federal Savings and Loan Insurance Corporation was established in (1581), 1934, the savings customers of insured associations typically regard the safety of their capital share accounts as equal to that of insured deposits in mutual savings banks.

Sixth, both institutions regard real estate mortgage loans for the construction, purchase, or improvement of residential property as the primary form of investment of savings entrusted to them. After allowing for liquidity needs and legal reserves, the managements of both institutions typically give first priority to home mortgage loans in the area of their location. Only funds that cannot be soundly committed to such loans are invested in investment securities.

Seventh, Congress recognized the basic similarity of these two institutions in the Federal Home Loan Bank Act of July 22, 1932. Membership in the Home Loan Bank system was required of all federal savings and loan associations, and was opened to mutual savings banks as well as to state-chartered savings and loan associations on a voluntary basis. A number of mutual savings banks have joined this system.

(1582) Q. . . . Would you continue in regard to the similarities between these two institutions, that is

mutual savings banks and savings and loan associations?

A. Going back to point No. 7, Congress recognized the basic similarity of these two institutions in the Federal Home Loan Bank Act of July 22, 1932. Membership in the Home Loan Bank system was required of all federal savings and loan associations, and was opened to mutual savings banks as well as to state-chartered savings and loan associations on a voluntary basis. A number of mutual savings banks have joined this system.

Eighth, thus, the only noteworthy distinction between savings and loan associations and mutual savings banks is the legal one that savings share accounts are an equity claim while savings deposits represent a debt claim. As indicated above, this difference has evolved not to be one of real substance.

(1583) It follows, therefore, that the policy of the federal government with respect to taxation of national banks capital shares should be applied in the same manner to savings and loan associations that it is applied to mutual savings banks.

(1585) Q. . . . Professor Woodworth, I would like you to contrast and compare the business of national banks with the business of savings and loan associations in 1952.

Mr. Klein: On the question of competition?

Mr. Dexter: On the question of competition.

Mr. Klein: Your Honor, I object to any opinion evidence on that subject.

The Court: If I may interrupt, I didn't understand him to ask whether they do compete. He asked them to contrast and compare their activities.

(1586) Mr. Dexter: That is right.

Mr. Klein: All right; this has been general. This doesn't pertain to the particular banks that savings banks compete in the city with, that the Michigan National Bank competes with.

He hasn't testified that he knows anything about those operations.

The Court: I understand.

Q. (By Mr. Dexter) : Would you answer the question, Professor Woodworth?

A. As developed above, the great bulk of the business of national banks in 1952 was in fields that savings and loan associations do not enter at all or enter only in a minor way. These fields included first, the creation of check book money by making loans and investments; two, receiving and paying out, clearing, collecting and transferring check book money; three, serving as warehouses for currency, receiving currency on deposit and paying out currency on demand; four, serving as depositories of the federal government; five, purchase and sale of foreign exchange; six, purchase and sale of domestic demand drafts; seven, issuance of officers' checks; eight, certification of customers' checks; nine, holding primary and legal reserve balances of other banks; ten, short-term loans to businesses for working capital purposes; eleven, term loans to businesses for fixed capital purposes; (1587) twelve, short term loans to farmers; thirteen, long-term mortgage loans to farmers; fourteen, loans to consumers (a) on secured installment basis; (b) on unsecured installment basis, (c) on single payment basis; fifteen, loans to brokers and dealers secured by stocks and bonds, loans to individuals secured by stocks and bonds for the purpose of purchasing or carrying securities; sixteen, providing

trust department services; seventeen, accepting time drafts drawn on them usually under letters of credit and thereby creating bankers' acceptances and eighteen, collecting demand and time drafts for customers.

In addition, national banks provide safekeeping services and sell travellers' checks, services which are unimportant in the savings and loan business.

Second, competition between national banks and savings and loan associations was confined almost entirely in 1952 to (a) thrift savings accounts and (b) residential real estate mortgage loans, the specialized fields in which savings and loan associations operate almost exclusively.

Third, one measure of the extent of competition between national banks and savings and loan associations and mutual savings banks is given in the exhibits that I have prepared.

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(1588) Q. * * * I have marked and identified on the record, Professor Woodworth, exhibits marked 221, 222 and 222-A. I hand you Exhibit 221. Did you prepare that exhibit?

A. I did.

Q. " And does it indicate on its face the source of the data that you used in its preparation?

(1589) A. Yes.

Q. I hand you Exhibit 222 and ask you the same questions. Did you prepare that exhibit?

A. I did.

Q. Does it indicate on its face the source of the data that you used in its preparation?

A. It does.

Q. And I show you Exhibit 222-A and ask you to identify it.

A. 222-A indicates the proportion of time and savings deposits or savings share accounts to total assets of national banks, savings and loan associations and mutual savings bank in selected years, 1913 to 1957. I prepared it and the references are there.

Q. You prepared it from information that was previously set forth in Exhibits 218, 221 and 222 that you have testified in reference to?

A. That is correct.

Mr. Dexter: I would like to offer in evidence with Professor Woodworth's testimony, Exhibits 221, 222 and 222-A.

Mr. Klein: Subject to check, there are certainly no objections.

The Court: Proceed.

Q. (By Mr. Dexter): Would you state, Professor Woodworth, what Exhibit 222-A shows?

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(1590) A. 222-A shows the proportion of the time and savings deposits or savings share accounts to total assets of national banks, of savings and loan associations, and of mutual savings banks in selected years, 1913 to 1957.

Mr. Klein: What do you mean by proportion? Would you explain that, sir?

A. Percentage.

Mr. Klein: Take 1952. Under the heading of national bank, it shows 20.4% of what?

A. Total assets.

Mr. Klein: Of total assets of the bank or what?

A. Of the bank; all national banks were represented by time and savings accounts.

Mr. Klein: This relates to assets of each institution considered separate?

A. In relation to their total assets.

Q. * * * Will you continue your testimony in regard to the exhibit.

The Court: What does NA mean?

A. ~~Not available, sir.~~

Q. * * * Will you explain the proportion you set forth there, Professor Woodworth?

(1591) A. In 1930 this proportion was 27.5% for all national banks compared with 71.3% in all savings and loan associations and with 89.4% in all mutual savings banks.

In 1952 these proportions were 20.4%, 84.8% and 89.5%, respectively, as indicated in Exhibit 222-A. Thus the share of the total business of national banks that overlapped as measured on this basis declined appreciably between these two dates from 27.5% to 20.4%.

It should also be noted from these proportions shown on Exhibit 222-A—

Q. (Interposing): Are those proportions materially overstated?

A. It does show that the proportions on Exhibit 222-A materially overstate the competitive area of operations between national banks and savings and loan associations.

Q. Why is that, Professor Woodworth?

A. In that time deposits of individuals, partnerships and corporations include certificates of deposit and other time deposits of national banks, which in general consist of relatively large accounts of business firms and wealthy individuals, the types of accounts that are not held at all or only to a very limited extent by savings and loan associations.

Q. Have you prepared a table that shows the classification of time deposits, savings deposits in national banks?

A. I have.

(1592) Q. . . . I show you, Professor Woodworth, a table marked Exhibit 223 and ask you to identify it.

A. I identify it as having been prepared by me.

Q. And does the source of information that you used to prepare that exhibit, is it indicated on the exhibit?

A. It is.

Mr. Dexter: I would like to offer Exhibit 223 into evidence as part of the testimony of Professor Woodworth.

Mr. Klein: What is it designed to show, Professor?

Q. (By Mr. Dexter): Will you explain what the exhibit shows?

A. The purpose of the exhibit is to break down the time and savings deposits of all national banks into different categories, and to separate out the category that is most comparable to savings and loan shares, which is savings passbook accounts rather than time certificate of deposits or other time deposits, which, as I have already indicated, are primarily rather large accounts that are owned by business firms or rather wealthy (1593) individuals rather than the small saver who is in the passbook business for the bank or for the share account for the savings and loan association.

Mr. Klein: You included certificates of deposit in that, too, I suppose?

A. In the total time deposits, a breakdown into each category.

Mr. Klein: No objection to 223, subject to check.

The Court: Received subject to check.

Q. (By Mr. Dexter): Would you indicate what is a more comparable measure of the overlap of activities

between the savings and loan associations and national banks by reference to Exhibit 223?

A. I should say that a more comparable measure than the relation of time deposits to total assets which we have been considering previously—

Q. (Interposing): That is as indicated in Exhibit 222?

A. Yes. —is the proportion between the savings passbook accounts and total assets of national banks.

In 1930 this was 20.8%, compared with 27.5% on the basis above.

On the assumption that this same proportion between savings passbook accounts and time deposits of individuals, partnerships and corporations—that is, 20.8% to 27.5%—obtained in 1952 in all national banks, the extent of competition of national banks with savings and loan associations would be reduced to 15.4% in this field.

(1594) Q. Do you have those figures in reference to the Michigan National Bank?

A. In the case of Michigan National Bank, the proportion of total time deposits to total assets at the end of 1952 was 38%, and the proportion of savings passbook accounts to total assets was 26.1%.

Those figures are taken from the reports of the Michigan National Bank.

Mr. Klein: At what period, you say?

A. The end of 1952.

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A. These proportions compare respectively with 20.4% and 15.4%, which is estimated on the proportionate basis for all national banks in the United States as of December 31, 1952.

Q. What is a reasonably accurate measure of this so-called competition between national banks and savings and loan associations?

Mr. Klein: What do you mean by measure? What do you mean by that, Mr. Dexter?

Mr. Dexter: In terms of economies that the Professor is referring to.

Q. (By Mr. Dexter): State it another way. What is a reasonably accurate measure of the degree of overlap between national banks and savings and loan associations in their common (1595) activity in the field of real estate loans? Have you prepared any exhibits to illustrate this?

A. I have prepared exhibits to illustrate that point.

Q. Is that illustrated by more than one exhibit you have prepared, Professor Woodworth?

A. I believe I prepared two exhibits that illustrate that point.

Q. I would like to show you an exhibit marked 224 and ask you if that has been prepared by you and whether or not the source of the information is indicated on the exhibit?

A. It was prepared by me, and the sources are indicated on the exhibit.

Q. And is that the same for Exhibit 224-A that I now show you?

(1596) A. That is correct, I prepared Exhibit 224-A and the sources of the information are indicated on the exhibit.

Q. Is that also true for the exhibit marked 224-B?

A. That is correct.

Mr. Klein: Your Honor, on Exhibit 224-A I would like to examine the witness a little.

The Court: All right, sir.

Mr. Klein: You do not, Professor, do you, by Exhibit 224-A show the amount of competition between national

banks and real estate mortgages to savings and loan amounts, do you?

A. I show the proportion.

A. This exhibit shows the proportion of real estate loans to total assets of all national banks and of all savings and loan associations in the United States on selected dates.

Mr. Klein: Does the bottom column under 2 show the dollar amount?

(1597) A. The dollar amount does not appear.

Mr. Klein: In any place?

A. Not on this exhibit. It is based on dollar amounts, but it is a proportion to show the relative importance of these real estate loans in the business of the two institutions.

Mr. Klein: It is in the proportion of mortgages to assets of the bank?

A. The total assets of the bank.

Mr. Klein: And the percentage or portion of mortgages to assets of the savings?

A. That is right.

Mr. Klein: But it doesn't show the amount of assets or of mortgages of a bank as compared with the amount of mortgages of savings and loan associations?

A. Not directly, no.

Q. . . . Referring to these exhibits would you indicate what you believe to be the answer to the question posed in regard to an accurate measure of this so-called competitive area?

A. I believe that a reasonably accurate measure of the degree (1598) of competition between national banks and savings and loan associations in the field of

real estate loans is as given in Exhibit 224-A, which shows the proportion of real estate loans to total assets for all national banks and for all savings and loan associations in the United States on various dates. And Exhibit 224-A brings out certain relative points that I should like to call to your attention.

First, that national banks were not importantly engaged in real estate financing until the 1920's. Second, the relative importance of real estate loans of national banks increased between 1930 and 1952 from 5.1% to 7.6% of total assets; and, third, the proportion of residential real estate loans to total assets of national banks was 6% in 1952, compared with a proportion of 81.2% in savings and loan associations.

This comparison brings out sharply the fact that residential mortgage loans represented a small part of the total business of national banks, while they constituted the dominant type of earning asset of savings and loan associations.

It should also be strongly emphasized that the proportion of residential real estate loans to total assets for all national banks in 1952—6% you recall is the ratio—substantially overstates the area in common between national banks and savings and loan associations in the residential loan field.

(1599). This conclusion follows, then, from Exhibit 224-B, which gives a distribution of residential real estate loans for all national banks and for the Michigan National Bank at the end of 1952.

Federal Housing Administration and Veteran's Administration mortgage loans were 61.2% of total residential mortgage loans of all national banks, a field that was a relatively small part of the mortgage loans

of savings and loan associations, which, roughly indicated, was 19.1% of the total amount of loans made in 1952 by the sixteen associations in the Michigan National Bank area, as shown in Exhibit 200-C, which I believe is a part—

Q. (Interposing) You have examined that, have you not?

(1600) A.. Yes, I have examined that. Conventional loans made up the remaining 38.8 per cent of total residential mortgage loans of national banks in 1952. This compared with a proportion of 80 per cent in conventional mortgage loans made by the above 16 savings and loan associations, as again shown in Exhibit 200-C.

Thus, there was apparent a high degree of specialization in the residential loan field, with the national banks showing great preference for FHA and VA loans, and with savings and loans displaying ever greater preference for conventional type loans. This is understandable, since the national banks prefer the greater liquidity and shiftability which characterize FHA and VA loans. These loans are readily bought and sold in the market. The savings and loan associations, on the other hand, need less liquidity and prefer the higher yields provided by conventional loans.

This division of the field was also in large part a result of the far stricter legal regulations applying to conventional mortgage loans of national banks. It will be recalled that they were not permitted to make such loans in 1952 for a longer period than ten years or for an amount in excess of 60 per cent of the appraised value of the property. These conservative terms did not suit the typical borrower, with the result that he sought more liberal terms elsewhere with savings and loan associations, mutual savings banks, (1601) individuals and others.

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(1607)

Lansing, Michigan,

Wednesday, October 22, 1958,

9:30 o'clock A. M.

(1608) Q. And have you got any observations that you could make by reference to Exhibit 224-B?

A. If you notice Exhibit 224-B, it will be observed that the Michigan National Bank showed a considerably smaller proportion of conventional mortgage loans in 1952 than all national banks combined, 29.5 per cent compared with 38.8 per cent. Also that Michigan National held an appreciably higher proportion of insured or guaranteed loans, 70.5 per cent compared with 61.2 per cent for all national banks, and with a very high proportion of FHA loans, 52.4 per cent.

In summary, the competition between national banks and savings and loan associations in seeking thrift accounts decreased appreciably between 1930 and 1952, as measured by the proportion of savings pass-book accounts to (1609) total assets of national banks from 20.8 per cent to about 15.4 per cent respectively.

The competition between national banks and savings and loan associations in the real estate loan field in 1952, as measured by the proportion of residential mortgage loans to total assets of national banks, was at most six per cent of total national bank assets. Moreover, this proportion, without doubt, overstates the real area in common, in view of the division of such loans into the categories (a) conventional mortgage loans, which were the forte of savings and loan associations, and (b) guaranteed or insured FHA and VA mortgages, which represented over three-fifths of mortgage loans of national banks, and which were a rela-

tively small part of the mortgage portfolio of savings and loan associations.

It should also be emphasized that, in so far as competition for mortgage loan business between national banks and savings and loan associations increased between 1930 and 1952, it was a consequence of a change in the loan policies of the banks, not of the savings and loan associations. Residential mortgage loans have been the principal asset of the associations from their early beginnings. This remained true in both 1930 and 1952.

Q. Did it remain so in the period in between those dates?

A. It did.

(1610) Q. Now, what was the problem in regard to taxation of national banks that Congress was faced with in enacting Section 5219 of the Revised Statutes?

(1612) A. I must speak completely as an economist, sir, in my interpretations of what the problem was and without any idea of entering into the legal aspects of the problem.

Congress, in my opinion, was concerned with the type of financial business which it provided for national banks to perform in the Act of 1864. This was primarily monetary in character; services in connection with first, providing a safe and uniform currency at par in all parts of the country; (b), providing sound banks to serve as depositories for the federal government and to assist the treasury in fiscal operations; and (c), providing a safe check book money for businesses and the general public.

The need for high liquidity of national banks was recognized in the prohibition of real estate mortgage

loans which was in effect until the Federal Reserve Act of 1913.

Congress in my opinion is concerned with the protection of national banks from discriminatory taxes levied by the separate states in favor of state chartered institutions and private commercial banks performing substantially the same services. The competitive area with (1613) which Congress was most concerned was monetary services as listed above, engaged in at that time by state chartered banks, trust companies, private loan companies and private bankers.

Also Congress was concerned with the making of short-term commercial loans to businesses and individuals. Conversely, Congress was not concerned with, in my opinion, protection of national bank shares against taxation at different rates of the business of other financial institutions engaged in providing non-monetary financial services of an entirely different character, such as the thrift savings function of mutual savings and loan associations and mutual savings banks, in their co-ordinate functions of making long-term real estate mortgage loans.

(1616) Q. * * * Professor Woodworth, in your opinion, is there any similarity in substance between the share accounts of savings and loan associations and the shares of capital stock of national banks?

(1617) A. My answer to that question would be no, there is very little—* * * similarity in substance, and the reason for that would be as follows:

First, the comparable component in the business of savings and loan associations to the capital funds of national banks is not savings share accounts at all, but reserves and undivided profits.

This fact is brought out—I have some information here from an abstract, I believe that—has it been introduced, No. 224?

Q. Yes.

A. Exhibit 224 shows where savings and loan associations, the national banks, and the mutual savings banks got the funds that they administered in their respective businesses at the end of 1952.

Reserves and undivided profits of savings and loan associations represented 7.3 per cent of their total assets, and the capital stock, surplus and undivided profits of national banks represented 6.5 per cent of their total assets, a somewhat smaller proportion.

Savings share accounts of savings and loan associations are comparable as a source of funds with total deposits of national banks, instead of with shares of national (1618) bank stock. Savings share accounts represented 84.7 per cent of total assets of savings and loan associations, and total deposits on national banks represented 91.8 per cent of their total assets on that date.

Comparable ratios for mutual savings banks, which are broadly comparable institutions to savings and loan associations were 91.8 per cent and 89.6 per cent, respectively, and I have developed the close similarity of functions and services of mutual savings banks and savings and loan associations; and may I recapitulate these proportions, just to put them in focus.

Q. I believe that would be proper, Professor Woodworth.

A. The co-ordinate items, as I see it, from an economic standpoint are reserves and undivided profits of the savings and loan associations as applied to total assets were the proportion of 7.3 per cent for total stock surplus and undivided profits to total assets of national banks, which we saw was 6.5 per cent, and

capital accounts to total assets of mutual savings accounts, in which the proportion was 9.8 per cent.

The similarity of those proportions is obvious, the range being from 6.5 per cent to 9.8 per cent.

On the other hand, the co-ordinate items from an economic standpoint, as I see it, for the three types of institutions, savings share accounts to total assets was 84.7 per cent, total deposits to total assets of national (1619) banks was 91.8 per cent, and capital accounts to total assets of mutual savings banks was 89.6 per cent, again a very close similarity in proportions, in the range from 84.7 to 89.6 per cent.

Q. Can this general comparative be illustrated in other ways?

A. Yes. I think I can illustrate it in at least two other ways.

First, the basic comparability of shares of national bank stock with reserves and undivided profits of savings and loan associations can be demonstrated in this first manner. We can say that aside from minor adjustments that total assets less deposits of a national bank equals capital stock, surplus, and undivided profits. It is a sort of an accounting equation and likewise, aside from small adjustments, we can say that total assets less savings share accounts of a savings and loan association equals reserve and undivided profits — another accounting equation which comes out with the idea that capital stock surplus and undivided profits are comparable to reserves and undivided profits of the savings and loan associations.

Thus, you see that both capital, surplus and undivided profits of a national bank and reserves and undivided profits of a savings and loan association represent protective funds of value to customers who have entrusted funds to their institution—to either institution.

If asset values of either institution decline well (1620) below the amount of customer accounts so that liquidation is necessary, all that depositors or savings shareholders can get is their proportionate share of the net amount realized from asset liquidation, disregarding, of course, the insurance of deposits and share accounts.

Thus, there is a basic similarity between capital surplus and undivided profits of a national bank and the reserves and undivided profits of a savings and loan association, and if I may pursue another method—

Q. Another method of comparison, yes.

A. I prepared an illustration of this by means of simplified statements of national bank "X" and savings and loan "Y".

Q. Professor Woodworth, I believe I have a copy of that and I would like to have it marked as an exhibit, and then you can develop that illustration from it as an exhibit.

(Whereupon a document entitled, "National Bank X" was marked as Exhibit 225 for identification by the reporter.)

A. Exhibit No. 225, is it, sir?

Q. That is correct. Professor Woodworth, I hand you an exhibit marked 225 and ask you if that is just a table illustrating one of these comparatives which you wish to testify in reference to?

A. That is correct.

(1621) . Q. . . . Professor Woodworth, can you just generally describe Exhibit No. 225?

A. Exhibit No. 225 is designed to place the assets and liabilities items of the national bank and the assets and liabilities items of a savings and loan association

before us in simplified form; and purely a hypothetical illustration to bring out a point that I wish to make in my testimony.

Q. And does that hypothetical illustration generally compare with the actual figures for these institutions?

A. Yes. The relationships on this statement, percentage relationship of each item to the total assets or liabilities could be a national bank or could be a savings and loan association relationship.

Q. And you have previously testified to those exact relationships?

(1622) A. That is correct.

Q. And this is an illustration of another comparison you think is proper between these two institutions?

A. Yes.

The Court: Just be a little more specific. It is not plain that these percentages necessarily represent the Michigan National Bank.

A. That is right.

Mr. Dexter: That is right, nor any bank.

A. As a matter of fact, your Honor, the percentages, your Honor, on here have no relation to the point that I am going to make.

The Court: Do they have any relationship to the testimony given with reference to all of the national banks in the United States? Have you got some tables on that?

A. No.

Mr. Klein: I object to the admissibility of it, * * *

Mr. Dexter: This is just an aid. I want it admitted as an aid.

(1623) The Court: It may be considered as an aid. I won't go so far as to call it evidence. * * *

A. (Interposing) There is no need, sir, to repeat the data in the exhibit as such. Copies are available to you.

Q. That is right.

A. If you will refer to Exhibit No. 225 now, assume that savings and loan "Y" is offered for sale to a private group under the condition that the savings share accounts will be recognized as deposits dollar for dollar; also, assume that the stated asset values represent fair market values. Under these assumptions, the private group would be justified in making an offer of about \$100; the excess of asset values over the amount of savings share accounts.

Next, assume that National Bank X is offered for sale. A private group would likewise be justified in offering about \$100—the excess of asset values over the amount of deposits.

After the sales, the two institutions could go on operating substantially as before, except that interest would be paid to depositors in the new stock savings bank instead of the former dividend on savings share accounts in the savings and loan association Y.

Q. Now, could you state in your opinion what are some of the basic (1624) differences between national bank stock and savings and loan share accounts?

A. Savings share accounts are unlike shares of national bank stock in that they represent a small personal indirect investment in the mortgage portfolio and other assets of a savings and loan association with no prospect of appreciation in value of the principal.

In contrast, share of national bank stock represent a risk-taking venture, motivated by the expectation of making a business profit. If successful, the owner of the national bank shares may realize not only current

cash dividends, but large appreciation in value per share.

For example, the investor who bought 100 shares of stock in the Michigan National Bank in 1941 for \$1,700, as noted, according to the record, at \$17 per share, received a cash dividend in each year through 1952.

In addition, he received 2.33 shares of stock dividends during this period, so that he had 333 shares in 1952. These shares were quoted at \$34 to \$36 a share in 1952, so that using \$35 as the mean of those two figures, the value of the principal had risen from \$1,700 to about \$11,655, an appreciation of \$9,955, or 586 per cent.

Q. Contrast this with a savings and loan share account investment.

A. Right along a little further, this example that I have just (1625) cited of large appreciation in the value of national bank shares suggests another difference between these shares and savings share accounts.

The large increase in net profit per share of Michigan National Bank was possible because for each dollar of capital stock, surplus, and undivided profits the bank had approximately \$20 of assets, the bulk of which was represented by debt to depositors.

This is what is often called "trading on the equity."

Savings share accounts cannot be used to trade on the equity in this manner. At the end of 1952, total savings share accounts were 84.7 per cent of total assets of all savings and loan associations in the United States, as shown by Exhibit 224.

On the same date, the proportion of capital stock, surplus, and undivided profits to total assets of all national banks was 6.4 per cent, and this proportion in Michigan National Bank was 4.8 per cent.

And third, I would point out that savings accounts or share accounts of savings and loan associations are un-

like shares of national bank stock in that these accounts are always open to receive small additional amounts from savings customers and the associations stand ready to return these dollars and no more to customers on request on (1626) thirty days' notice, and usually on demand, in fact. This permits the general public always to participate on equal terms with existing share account holders.

Not so with shares of a national bank. The number of such shares is fixed for long periods, and is changed only after formal approval by a vote of the stockholders. The owner of national bank shares cannot turn them in to the bank for redemption at a fixed value. He can convert them into cash only by sale, usually through a security dealer, in the over-the-counter market, such shares not being listed on organized stock exchanges.

In contrast again, savings share accounts are not bought and sold in the market at varying prices. The amount and value in one's account remains the same except as increased by additions from savings or as reduced by withdrawals, except in the unlikely contingency of liquidation of a solvent association.

Fourth, most savings and loan share accounts are insured by the Federal Savings and Loan Insurance Corporation. Unlike this, national bank shares of stock are not insured; in fact, were subject to double liability up to July 1, 1937, following an amendment to the National Bank Act in 1935. It is the deposits of national banks that are insured by the Federal Deposit Insurance Corporation.

Thus, the basic comparability of savings share (1627) accounts and deposits which I have just established were recognized by Congress in its legislation to protect owners of savings share accounts and owners of deposits.

I was also somewhat surprised to see Exhibit 217, entitled "Facts About the Difference Between Banks and Savings and Loan Associations," the exhibit which I had seen for the first time myself last Monday, that Michigan National Bank and the Michigan Bankers Association have gone to considerable pains to separate two things which we are talking about here—that is, the savings share accounts and time deposits—and these two things the public regards as competitive and similar for all practical purposes, thereby expressing the purpose of this exhibit to allay the confusion that the average man in the street has between savings share accounts and deposits of banks.

Mr. Klein: I move that that last be stricken, as the exhibit speaks for itself, and the comments of the Professor, advocating the cause of the defendant, as to what an exhibit means are hardly in order as opinion evidence. I move that it be stricken.

Mr. Dexter: I think, your Honor, he referred to it as another illustration of this overall comparison.

The Court: In so far as it attempts to state what was in the minds of the bankers preparing this exhibit, I grant the motion to strike it.

(1628) A. There is nothing in the exhibit, if I may add one other point, that expressed any similarity between national bank shares and savings and loan shares.

Q. (By Mr. Dexter): Now, Professor Woodworth, in your opinion, was money invested in share accounts of savings and loan associations in 1952 in competition with the business of national banks within the meaning of Section 5219 of the Revised Statutes?

Mr. Klein: I object to the question. That calls for a legal conclusion, and I certainly don't think—that is for

the Court to decide, and not for this witness to comment on. He is asking him his opinion on how it applies to a legal statute, the statute that is before the Court.

Mr. Dexter: Your Honor, we would direct the Court's attention to the fact, I believe, that this question is a mixed question of law and fact, by previous rulings of this court, and obviously we direct our question to the witness in terms of the factual aspect of the question.

The Court: Well, are we all going to be talking about the same thing, though, when we talk about competition? You haven't defined "competition" in the terms of this question, at least, what you mean by it. You might mean one thing, and the Professor might mean another, and I might still mean a third, and the Supreme Court of the United States may mean a fourth, when you get there.

(1629) So it seems to me that I do have the problem, as in the opinion you handed up yesterday, you pointed out that the Michigan Supreme Court, in modifying the court rule, have permitted opinion evidence, at least in the discretion of the court, with respect to the ultimate question to be decided.

This, however, is not entirely one of fact. It is one of law. And if we are going to reduce it to one of fact in some manner or other, or are going to be able to at least, you have got to define competition so we are all talking about the same thing.

I think if that is done, I will permit the question, recognizing the difficulty of the witness testifying on something that involves not only fact, but also questions of law. But, nevertheless, I will permit it.

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(1630) Q. (By Mr. Dexter): I will ask you the question, Professor Woodworth, was money invested in share accounts of savings and loan associations in 1952 in competition with the business of national banks in the meaning of Section 5219?

The Court: Well; right there and now, Mr. Dexter, is that under any theory of the question here—is it in competition with business of national banks or is it in competition with money invested in the shares of national bank stocks? Which is the issue here?

* * * * *

Q. (By Mr. Dexter): In that question by the word "competition," Professor Woodworth, is meant the extent to which the two institutions, that is the national banks and savings and loan associations are operated in the same areas or fields of (1631) financial business?

* * * * *

(1632) A. In the light of the facts that I developed in my previous testimony, my answer would be no.

First, the business of national banks in 1952 was predominantly in the monetary field; that is, as creditors, holders, transferers and lenders of money;

Second, the business of savings and loan associations was predominantly in the field of gathering together thrift savings and lending these accrued savings for home ownership on the basis of long-term residential mortgages;

Third, the purposes and functions of these two institutions were too different and the area of common operations was too narrow to constitute substantial competition in an economic sense.

Passbook savings accounts of national banks were about 15 per cent of their total assets in 1952. Residential real estate loans of the national banks were 6 per cent of their total assets in 1952.

Moreover, the fact that each institution specialized to a high degree in different types of loans in the residential loan field narrowed even further the area of real competition.

Over three-fifths of residential mortgage loans of national banks at the end of 1952 were guaranteed or insured (1633) by FHA and VA. Less than two-fifths were conventional mortgage loans.

In contrast, only about one-fifth of residential mortgage loans of savings and loan association were FHA and VA mortgages, the remaining four-fifths were conventional mortgages, almost all of which were made with a longer maturity or were for a larger amount than permitted by law to national banks.

Attention should also be called to the fact that the scope of competitive operation is much narrower in the field of FHA and VA mortgage loans than in the area of conventional mortgage loans.

This follows from the fact that government regulations require uniformity in rates, maturities, bases of appraisal, home specifications, and in other respects.

It is also relevant that the overall competition of savings and loan associations with national banks in the State of Michigan was substantially less than in the United States as a whole.

For example, the United States Savings and Loan League fact book for 1954 reports, on page 33, that home mortgage recordings of all savings and loans in Michigan in 1952 were 149 million 964 thousand dollars, compared with total home mortgage recordings in Michigan for all lenders of 616 million 749 thousand dollars, a proportion of 24.3 (1634) per cent.

In the entire United States the comparable proportion was 35.8 per cent.

The figures from which these were computed were 6 billion 452 million 357 thousand for savings and loan associations, and a total of home mortgage recordings in the United States of 18 billion 17 million 677 thousand.

The proportion in Ohio was 57.2 per cent, the relation between 882 million 162 thousand and 1 billion 542 million 352 thousand.

In Illinois the proportion was 52.6 per cent, the relation between 556 million 280 thousand and 1 billion and 57 million 504 thousand.

And in Indiana the proportion was 46.4 per cent, the relation between 203 million 381 thousand and 438 million 114 thousand. That is compared with 24.30 per cent in Michigan.

(1640) Q. * * * Professor Woodworth, was there actual discrimination in an economic sense against national banks (1641) as compared with savings and loan associations by the tax structure of the State of Michigan in 1952?

Mr. Klein: I object to the question, sir; * * *

The Court: I shall permit the answer for the reason that it is entirely possible when this case gets to the appellate court; they are going to say—which I don't think they have said up to this point, although I am still not deciding the legal problem yet—until I have read all of the cases and re-read them again that whether or not there is actual discrimination depends upon economic principles rather than what they have said about legal principles up to this time. It is entirely possible that they will say that when it gets there and I shall permit you to put this in as substantiating your theory, and, of course, subject to the objection that counsel has made.

A. I would say that there does not appear to have been a (1642) significant difference between the Michigan tax burden on national banks and savings and loan

associations in 1952. * * * I will first consider the intangibles tax on bank shares compared with the franchise tax on savings and loan associations.

(1643) Q. Do you have an exhibit to illustrate this comparison? 7

A. Yes, I have prepared such an exhibit, Mr. Dexter.

Q. I show you an exhibit marked 226 and ask you if that is that exhibit.

A. That is correct.

Q. Does it indicate the source of statistical information?

A. It does.

Mr. Dexter: Your Honor, I would like to offer Exhibit 226 as part of the testimony of Professor Woodworth in his explanation of his testimony.

Mr. Klein: Your Honor, I object to Exhibit 226 because it is a comparison on the gross assets of a bank with the gross accounts of savings and loan before deduction of liabilities, and the Supreme Court of the United States in the Minnesota case says this very type of comparison is not valid, and ruled against the State of Minnesota on this very type of presentation.

The Court: That is, I believe, a fair statement of what the Supreme Court has done up to this time, and we can get down to my decision in this case and discuss whether I am bound by that decision and the construction that you give to it. But the Supreme Court has changed its mind on many things, and based their decision sometimes on sociology, other times on economics.

(1644) I have no reason to be sure that the last word has been said on this subject, and I don't know whether counsel can present this matter except to make a record. You can make it by way of an offer or you can dictate the offer upon the record, but it seems to me that the Supreme Court would be in a much better position to

fairly consider the defendant's theory as well as the plaintiff's and what the Court has said in previous cases if it has testimony as it comes from the mouth of the witness.

I think this exhibit is subject to exactly the same objection that the previous question was and that the ruling will be the same.

You may proceed without any determination that I am going to follow that theory when it comes to deciding the case. I will reserve decision on that until later on.

A. I should say the fairness of the Michigan intangibles tax on national bank shares and the franchise tax on savings and loan associations can best be charged on a state-wide basis.

Exhibit 226 which you have shows that the five and a half mills tax applied to capital, surplus and undivided profits of all national banks in Michigan as of December 31, 1952, would have been \$916,982, which was .02479% of their total assets.

It also shows that the one-fourth mill franchise tax applied to the sum of reserves in savings share accounts (1645) of all state chartered savings and loan associations, 36 in all in Michigan, as of June 30, 1952, would have been .02243% of their total assets.

The difference in the rates on total assets is insignificant, for all practical purposes.

An examination of Exhibit 213, which I believe is in the record * * * indicates that there was no significant difference between the total state tax burden on the Michigan National Bank and the sixteen savings and loan associations in its trade area.

For example, the total state and local taxes of Michigan National Bank amounted to 9.1% of its total assets in 1952. The same ratio for the sixteen savings and loans was 8.9%.

The Court: Is that a correct reading of the percentage, or am I in hundreds of per cent? Here you have got ratio of six. Here you have 600.

A. This is 600. I said in per cent, sir.

Q. (By Mr. Dexter): You were wrong, then?

A. I was wrong. I said it is stated in per cent instead of ratio.

Mr. Klein: Your Honor, on this exhibit, just so we don't get off the subject, may I ask two questions on (1646) Exhibit 226 the witness is now testifying about, just so we don't get off the track. * * * Does the assets in 226 of national banks, are they gross assets before deducting the deposit and any other liability of the bank?

A. They are, sir.

(1647) Mr. Klein: And the same is true of the savings and loan associations?

A. That's right.

A. Referring again to Exhibit 213, if the comparison is made on the basis of the franchise and intangibles taxes paid, there again was not a significant difference. For Michigan National Bank, these taxes were 5.5 per cent, or a little—

Mr. Klein (interposing): Your Honor, may I interrupt? I object to this whole line of the testimony because it is an asset comparison, or comparison of the income.

The Court: Yes. All this testimony following the question that was specifically objected to and upon which I gave a ruling, all the testimony comes in the same class and is subject to the same objection and is admitted under the same ruling.

Mr. Klein: Thank you, sir.

A. These taxes were a ratio of .055 to total assets, as compared with a ratio of .053 for the ten state chartered savings and (1648) loan associations. The six Federal associations were taxed on a different basis in 1952, but if the same rates are applied to them, the overall ratio would be approximately the same as for Michigan National Bank, according to Mr. Carlson's testimony.

Q. (By Mr. Dexter): Now, would you state, in order that it might be very clear, the ratios in reference to the total taxes on the Michigan National Bank on Exhibit 213. Did you say 9.1 per cent?

A. I stated it in terms of percentage, but I would be glad to state it in ratios as it is from the account here. That should be corrected, if you wish to put it in ratios, to .091 compared with .089.

(1652) Q. * * * Do you have and did you prepare other statistics for purposes of comparison of the tax burden between (1653) these two institutions?

A. Yes. In developing this analysis, in my own mind I considered four different bases by which these two institutions might be compared for state tax purposes.

Mr. Klein: These two—you mean the national banks or do you mean the Michigan National Bank?

A. I mean the national banks. * * * In general.

Mr. Klein: I have an objection on this whole line of inquiry.

The Court: It may be received on the basis that the preceding testimony was received.

Mr. Klein: Thank you, sir.

A. The first was capital, surplus and undivided profits of national banks compared with savings share accounts of savings and loan associations. The second was

capital, surplus and undivided profits of national banks compared with reserves and undivided profits of savings and loan associations. The third was net profit before Federal income taxes (1654) of national banks, compared with adjusted net profit of savings and loan associations. The fourth was total assets of national banks compared with total assets of savings and loan associations.

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Mr. Klein: What do you mean by "adjusted," sir?

A. I shall define that, sir. * * * With respect to number one, in the light of the facts developed in my preceding testimony, capital, surplus and undivided profits to savings share accounts is completely absurd. It ignores the economic realities of the businesses of the two institutions and rests on the superficiality that savings and loan share account is legally an equity rather than a deposit debt and being an equity share is comparable to shares of national bank stock. The flagrant injustice of this basis is brought out sharply by the facts already cited that the proportion of capital, surplus and undivided profits to total assets of all national banks at the end of 1952 was 6.5 per cent. This ratio for Michigan National was 4.8 per cent. On the same date, the proportion (1655) of savings share accounts to total assets of all savings and loan associations was 84.7 per cent. Thus to apply the same tax rate to savings share accounts of the associations that is applied to capital stock, surplus and undivided profits of national banks would be tantamount to taxing the total assets of savings and loan associations at a rate thirteen times higher than the total assets of national banks. That is the relation between 84.7 and 6.5 per cent. In the case of Michigan National Bank, the total assets of the associations would be taxed 17.6 times higher; that is the ratio between the 84.7 and 4.8.

The second basis of comparison, capital, surplus and undivided profits of national banks to reserves and undivided profits of savings and loan associations is reasonably equitable and is also administratively practicable. As already developed in detail, these two items are comparable in that they represent the fund of asset values in excess of deposits and other debts in the case of national banks—

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(1656) Q. . . . These were comparisons that you have taken into consideration in arriving at your conclusion in regard to 226?

A. That is correct.

Q. You are not trying to say legally what savings and loan share account is?

A. No.

Q. You are speaking purely in reference to economic comparisons?

A. I am trying to show my reasons as a basis for selection of the basis of comparison that I used and selected to judge whether or not there was discrimination against national banks (1657) or against savings and loan associations for that matter in the Michigan tax structure and judging by Exhibit 226.

Q. You would offer this in support of your . . . conclusion testimony as to 226?

The Court: For that purpose, it is permitted.

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A. Starting with the last sentence as already developed in detail, these two items are comparable in that they represent the fund of asset values in excess of deposits and other debts in the case of national banks, and in excess of savings share accounts and debts in the case of associations. In other words, these funds in

both cases constitute the protection against loss provided for depositors in the one case and for savings share accounts in the other.

However, this basis has the drawback of giving tax preference to institutions with weakest capital structures and thereby encouraging a minimum of protective capital funds.

Q. For that reason, you did not believe it to be a proper comparison?

A. That is correct. This is not equitable to the stronger institutions nor is it good public policy for that matter to place a penalty on safety and a premium on weakness. So I rejected that in my thinking as a proper basis of comparison.

(1658) Third, a strong case can be made on logical grounds for the comparative basis, net profit before Federal income taxes of national banks to adjusted net profit of savings and loan associations. Net profit is a better measure of the ability to pay taxes than assets; valued on some rather arbitrary basis assets that have little or no earning power cannot justifiably be taxed at the same rate as assets that have large earning power, but there are serious practical limitations on the net profit basis arising from the large differences in organization and method of profit determination of the two institutions.

It would not be equitable to use net profits before dividends to share accounts as the basis for savings and loan associations since national banks deduct interest on time deposits as an expense in the determination of their net profit, neither would it be fair to national banks for savings and loans to use net profits after dividends to share accounts as the basis.

By raising the dividend rate, the associations could reduce their tax base to a minimum.

(1659) Also, the effect would tend to weaken their reserves and undivided profits, and thereby weaken the safety of the savings share accounts.

If the net profit basis of comparison were used, it would be necessary to define adjusted net profit of savings and loan associations for state tax purposes. This could be done equitably by defining adjusted net profit as net profit before dividends to share accounts less an expense allowance equal to the average rate paid in the tax year on time and savings deposits by national and state chartered banks in Michigan times the average amount of savings share accounts in a savings and loan association.

Q. What did you find to be, then, the most practical basis of comparison?

A. Well, I found the most practical basis as I worked on this to be total assets to total assets.

Q. And that is the basis that you have testified to in Exhibit 226?

A. That is the basis I testified to in 226, and this basis has the advantage of both a reasonable degree of equity and of administrative simplicity.

Total assets represent the principal basis of earning power and the opportunity to realize earnings in both institutions.

In view of the unlike character of their businesses, (1660) organizations and operations, the amount of total assets is doubtless as equitable a common denominator for tax purposes as can be developed, in my opinion.

Q. Professor Woodworth, based upon your examination of data to which you have made reference in your testimony and knowledge of the savings and loan asso-

ciations, have savings and loan associations changed their business character or practices since 1933?

A. I would say not in any substantial way.

(1661) *Crass Examination*

By Mr. Kleir:

Mr. Klein: Reserving my objections, of course, your Honor, throughout.

(1664) Q. * * * Do you believe that a proper basis of comparison of tax burden, a tax against the shares of a national bank and those of a building and loan association, should be by taking the tax burden of the state in relation to the assets of the bank without deducting liabilities as compared with the assets of the building and savings and loan associations without deducting liabilities? Is that correct, sir?

A. That is correct.

Q. And you also expressed the opinion, did you not, that it would not be economically sound to compare a tax on the share or equity account of a bank as compared with the share account of a savings and loan association because savings and loan associations in some respects have different activities and different functions than the banks?

A. I didn't state it in those terms.

Q. How did you state it, sir?

A. I stated that it was inequitable to apply the same tax rate to the capital stock, surplus and undivided profits of a national bank and to the capital, savings capital, shares of savings (1665) and loan associations, that those two items are not comparable from a practical business operations standpoint.

Q. Didn't you also talk about unlike character of the business?

A. That has very little consideration in my standpoint in this answer.

Q. You did so testify.

A. They do have very different functions, true.

Q. And that is one of the reasons why you like to make a different tax approach, isn't that so, sir?

A. No, I do not think so.

Q. You don't think unlike characteristics has anything to do with this question, then?

A. I think unlike characteristics have something to do with my answer, yes.

Q. What do you have to do with it?

A. My answer is based on the fact that we have the practical problem of taxing, the state, two financial institutions: one of them is a national bank; the other is a savings and loan association. Their operations are, to be sure, very different. They have some things in common, but basically they are quite different.

That means that from the standpoint of justice and equity we need to pick out some basis that will more or less overlook these differences and put it in terms of perhaps, as (1666) I mentioned in my testimony, total assets of the one compared to total assets of the other. That is what each of them works with in the beginning. Those are in dollars they are equal, they are fungible. One can use them one way, the other another. They are no more different in that sense than comparing the business of a farmer with the business of a merchant in the city.

They both are operating with so many dollars. That is a simple basis. And I would say one reason that I prefer that basis is this unlike character of their operations. Dollars are dollars, but the activities of the

savings and loan associations are one thing—you might call that an apple—and the activities of the national banks might be a coconut.

(1667) Q. Well, you did say they have certain activities in common, didn't you, sir?

A. That's right.

Q. And the mortgage business activities are those in common, aren't they?

A. One of the activities in common.

Q. In fact, that is the principal use of funds of a building and savings and loan association; to invest in mortgages, is it not?

A. That is correct.

Q. And mainly, not altogether, in residential property; isn't that correct, sir?

A. Mainly in residential property.

Q. Yes. And isn't it a fact that savings and loan associations attempt to get borrowers on residential property from every class and strata of society, so long as the property has value to back up the loan and the credit of the borrower is sound?

A. Yes.

Q. Regardless of whether he is a college professor, a lawyer, a judge or a workman in the factory; isn't that true, sir?

A. I would say so.

Q. And they appeal to that type of borrower, do they not, sir?

A. Not to the last name mentioned. They appeal to any borrower, as you said in the beginning, that wants to build a home.

Q. Any borrower who wants to build a home or own a home; isn't (1668) that correct? They don't turn down people who buy homes that are already built, do they?

Q. No. They appeal to borrowers who want to either build or own a home; isn't that correct?

A. They appeal to them and to others.

Q. And to others. In other words, the savings and loan association seeks out as its customers, borrowing customers, borrowers from every economic strata in society, so long as his property has the value to back up the loan and he has financial ability, at least the savings and loan thinks, to pay for it?

A. I will say that the savings and loan associations are glad to accept loans from any class of borrowers who come within the limits of their lending ability, whether they are high income groups or low income groups, but the fact is that most of the loans are made to low and middle income group people.

Q. Well, isn't it a fact that the borrowers of savings and loans for residential property are about the same class of borrowers who borrow on residential properties from commercial banks in the same area?

A. In general, yes.

Q. And in your opinion, does it make any difference to the borrower whether he borrows from a savings and loan association or from a commercial bank, so long as he gets the money he wants and the terms are competitive?

(1669) A. No.

Q. . . . The answer is no, it doesn't make any difference, does it?

A. Under your conditions that he gets what he wants.

Q. And he doesn't care whether he goes to one institution or another, so long as he gets the kind of mortgage he is after on the best terms he can get it for?

A. That's right.

Q. Isn't that correct?

A. That's correct.

Q. Now, while we are talking about that, isn't it true that the savings and loan associations who have capital to invest or money to invest try to make as much on their mortgages as they reasonably can in the competitive market?

A. Yes, that's true.

Q. And isn't the same true of commercial banks making loans on the same types of residential properties?

A. That is true; competitors.

Q. They are both competitors for mortgages, aren't they?

A. That's right.

Q. In other words, the commercial banks making mortgage loans on residential property compete with the savings and loans in that area and vice versa, don't they?

A. That's correct.

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(1670) Q. (By Mr. Klein): In your opinion, sir, is there any difference to the borrower on a residential piece of property, within the dollar limits we are talking about on residential property made by the savings and loan associations, whether or not he gets an FHA loan or a conventional loan?

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(1671) A. Yes, there is a difference to the borrower whether he gets an FHA or conventional loan.

Q. . . . Why? What is the difference?

A. The difference would be a question of whether the terms of the one are more favorable to his needs as compared to the terms of the other.

Q. All right. Following that line of thought, FHA loans are for 20 or 25 years, are they not?

A. They are made for that long period of time.

Q. And the interest rate is about 4 to 4½ per cent, is it not? In '52 I am talking about.

A. In '52 I believe that was the rate.

Q. And then there was an insurance amount they had to pay over and above that 4 per cent of a half a per cent, I believe; isn't that correct?

A. That is correct, I believe.

Q. And conventional loans at that time were about eleven to twelve or thirteen years by savings and loan associations, were they not?

A. I cannot answer that.

(1672) Q. Don't you know from your study, sir?

A. I can say that the original maturities of individual loans must have been as much as twenty years at that time.

Q. Conventional? Well, if the testimony in this case shows that they varied from eleven to twelve and thirteen years in this area competing with the Michigan National Bank, the borrower would be more interested in getting a longer term FHA for twenty or twenty-five years than the eleven to twelve or thirteen years, would he not?

A. Not necessarily.

Q. That would be a factor though, would it not?

A. In some cases, where a man hasn't much of a down payment that can be made.

Q. In other words, if he has an FHA loan, he doesn't have to make as big a down payment, does he?

A. That is correct.

Q. So it is more advantageous if he doesn't have the money and wants to make a small down payment to get an FHA loan, isn't it, sir?

A. That is the only kind of loan he could probably get.

Q. Yes. And the interest rate on an FHA loan was lower than the conventional loans in 1952, was it not?

A. I don't know about that.

Q. You don't know?

A. No.

(1673) Q. If the testimony shows that it was a half to one per cent difference, an FHA loan, the borrower would have that advantage too, would he not, sir?

A. In the hypothetical case that you have stated, if he has a lower interest rate, he would have that advantage, but I am not testifying to the fact that the rate was lower.

Q. No, I am not asking you to testify to the fact.

A. And I would also like to make it clear I am talking about the cost to the borrower, not what the bank gets out of it.

Q. Yes, sir. We understand each other perfectly. And in your opinion, sir, would it not be more inducive and conducive to home ownership by the borrower if he could borrow money at lower rates or longer terms and with a lower ratio of loan to appraised value; wouldn't that be more conducive to home ownership than a conventional loan at a shorter term and a higher rate of interest?

A. There isn't much home ownership involved, sir, in FHA loans.

Mr. Klein: Would you read the question; and answer the question, sir.

(The question was read by the reporter.)

Mr. Klein: I misspoke. It should be higher ratio of borrowing to appraised value.

A. With that correction, I will answer the question yes.

Q. (By Mr. Klein): In other words, that would be conducive to more home ownership, the better and easier terms he gets?

(1674) A. If you will permit me to qualify slightly.

Q. Surely.

A. We are speaking of temporary home ownership, not necessarily ownership over a decade, because the very small equity in FHA and VA loans might conceivably lead to many foreclosures and not home ownership that we are particularly desirous of developing and home ownership that would not necessarily be of a permanent character.

Q. Well, Professor, wasn't it the purpose of the Federal Housing Administration law to make it possible for more people to buy or build their own homes on easier and longer terms of payment? Wasn't that the purpose of the law?

A. I would say yes to that. That was one of the purposes.

Q. In fact, just yesterday or the day before, there was a further relaxation of the requirements, wasn't there?

A. I don't know.

Q. You don't know. Well, sir, and the same is true with the VA loans; they are long-term loans, aren't they, sir?

A. That's right.

Q. And the interest rate is low, isn't it?

A. That's right.

(1675) Q. . . . Is it not true, Professor, that in 1952—and this is an opinion I want, your opinion—that the savings and loan associations issued more or made more conventional loans than FHA and Veterans loans

because they could earn a higher rate of return on the conventional loan than they could on the FHA loan and thus make more money for their shareholders?

A. That was one of the reasons.

Q. That was one of the reasons, wasn't it?

Now, let's get over to the shareholder situation, sir. I believe you testified yesterday that shareholders in a national bank and shareholders in a savings and loan association both had in mind operating their respective businesses for profit. Isn't that correct, sir? They intended to make a profit on the business activities of their respective organizations?

A. Not using profit in the same sense of the word in the two cases, the organizations are so different that it is very difficult to answer that question.

(1676) Q. Well, let us get into that, sir. Is it not true in your opinion that savings and loan associations in 1952 attempted to get as many share investors as they could?

A. I would assume so.

Q. And is it not true that in 1952, commercial banks attempted to get as many savings, time or book savings accounts as they could?

A. I would assume so.

Q. And is it not true, sir, in your opinion that the rate of return paid upon the shares of savings and loan was an important factor in getting that savings account as compared with what rate of return that investors might get from other sources?

A. One of the factors.

Q. Wasn't it the most important factor?

A. I wouldn't say that it was the most important factor.

Q. It was an important factor?

A. An important factor.

Q. Yes. And isn't it true that the savings and loan share accounts grew enormously between the periods from 1935 to 1952 in volume and in number?

A. They grew rapidly.

Q. Very rapidly, didn't they?

A. Not continuously from 1935; it went down during the war and they came up since the second World War.

(1677) Q. And their growth in amount and number has outstripped the growth and number and amount of savings, time savings deposits in commercial, national banks, hasn't it?

A. That is true.

Q. Very much so, hasn't it?

A. Appreciably greater growth, although the last year, I don't think you find very much difference.

Q. And isn't it true in respect to mortgages that the number and amount of residential mortgages, of savings and loan associations grew enormously during that period I described to '52?

A. That is correct.

Q. Very enormously, haven't they?

A. I don't like the word "very."

Q. Well, isn't it true today, sir, that as of today, according to your own statistics that one out of every three residential mortgages on residential property is owned by a savings and loan association in the United States?

A. I have no statistics that give the number in terms of the number of loans.

Q. Well, percentage-wise, in amount, dollar-wise?

A. I think I gave the figure for the State of Michigan for 1952, if I remember the figure correctly, the savings and loan associations were responsible for 24 approximate per cent of the home mortgage recordings.

(1678) Q. And you have quoted from a Fact Book of the United States Savings and Loan League and if their record shows one out of three, you would be inclined to believe that is a correct statement, wouldn't you?

A. I have no reason to believe that it was not.

Q. You don't know?

A. I don't know.

Q. But there has been a tremendous growth?

A. Yes, there has been a rapid growth.

Q. And hasn't that growth in the mortgage field outstripped the growth of national banks generally?

A. In the mortgage field?

Q. Yes, in that same period.

A. I am not at all sure about it.

Q. You are not sure?

A. They have both grown very rapidly in the mortgage field, since the war?

Q. Yes, now, let us stick to the mortgage field. I think you testified, Professor, that since 1917, I believe it was, or '16, Congress of the United States has seen fit to liberalize the mortgage operations of national banks by permitting them to loan money for longer terms, isn't that correct?

A. That is correct.

Q. And then, that was originally in 1917 they could loan for (1679) what, a month?

A. No, it wasn't that soon.

Q. It was in '27?

A. 1916, they were able to loan for one year, the first time.

Q. I see. For the first time.

A. In 1927, they were able to loan for five years.

Q. And then, when was the law put in permitting them to loan for ten years?

A. That was along in 1934, '35; I can't recall.

Q. Yes. I think our records show August 23, 1935, and that permitted national banks which previously had not been permitted to make any mortgage loans on residences, to loan for a ten-year period an amount equal to not more than sixty per cent of the appraised value, so long as forty per cent of the loan was amortized in ten years.

A. That is correct.

Q. And you knew, of course, that the bank at the end of the ten years could then extend the loan for another ten years, couldn't it, the balance?

A. Yes.

Q. And then, the law again was liberalized by the Federal Housing Administration law, was it not?

A. That is correct.

Q. When was that passed, sir?

(1680) A. 1934, I believe.

Q. And that permitted national banks to loan for a period up to twenty-five years, did it not?

A. Yes.

Q. And at what rate of loan to appraised value of property?

A. That ratio has been changed from time to time, but as I recall, for a very low cost housing, it went up to ninety per cent.

Q. Up to ninety per cent; and what other changes have there been in the laws liberalizing the right of national banks to make loans on residential properties? There was a Veteran's Law, wasn't there?

A. That is correct.

Q. When was that passed, sir?

A. I believe it was 1944, in that vicinity; in '44 or '45, the readjustment service act, I believe it was called.

Q. And then, is it not true, sir, since August 17, on August 17, 1954, the law on conventional mortgages was liberalized permitting not only the ten-year loan but a loan on an appraised value of sixty-six and two-thirds per cent of the appraised value?

A. That does not apply to the period of this case.

Q. No, it does not, but you have testified and your exhibits go to 1957?

A. That is correct.

(1681) Q. That is correct and subsequently, they have passed the law, Congress has, now permitting national banks to loan on conventional mortgages for a twenty year period and a sixty-six and two-thirds of appraised value?

A. That is correct.

Q. So is it not your opinion, sir, that since at least 1927 to date the permissive fields of activity of national banks in making loans on residential properties has been enormously changed from almost zero to now a very long term under FHA and VA and a pretty long term on conventional loans.

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A. There has been a very large increase and liberalization of the national banks.

Q. And there has also been, has there not, a very large increase in actual mortgage lending on residential property by national banks from '27 through the '52 period?

A. That is true.

(1682) Q. There has been an enormous growth too, hasn't there, in that field?

A. There has been a large growth.

Q. And is it not true that in the State of Michigan for 1952, there was a growth—that there was about \$369

million-of real estate loans on residential properties by all Michigan banks—by all national banks in Michigan?

A. I would have to consult the records in order to answer that. I can't answer a question of that sort.

Q. You will agree, will you not, Professor, that the mortgage lending activities of national banks in 1952 were a very substantial part of such banks' lending activities?

A. I would not say substantial part of their total lending activities. I would include investments as well.

Q. No. I am talking about loans for the minute. Let us talk about loans.

A. A sizeable part of their total loans.

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(1683) Q. Did you know, or do you know, Professor, that as at December 31, 1952, in the State of Michigan that of all of the loan accounts of national banks operating in the states that approximately one-third was loans secured by residential properties?

A. I would think that is correct.

Q. And you would say a 33 per cent ratio of loans is a pretty substantial amount of the loan business of the bank, wouldn't you?

A. It is sizeable.

Q. Wouldn't you even go so far as to say substantial, sir?

A. That is a matter of definition.

Q. Well, is a third a substantial amount of a hundred?

A. Sizeable.

Q. Is 300 million dollars a substantial amount or only a sizeable amount?

A. I have no definition.

Q. You have no opinion as an economist?

A. Substantial and sizeable, those are matters of qualitative difference.

Q. You don't think there is much difference between the two, do you, without quibbling. I don't say you have been, sir.

A. I would say that it is a large proportion of their—

Q. (Interposing): A large proportion of their loans. That satisfies me. Now, have you any notion of the proportion (1684) of interest income derived by national banks from mortgage loans as compared with interest income from all loans of the banks in 1952, just an approximation?

A. All national banks in the country?

Q. Yes, just your best judgment.

A. I would hate to hazard a guess offhand on that. I haven't looked the matter up for some time.

Q. Well, let's get down to the Michigan National Bank, which is really what we are here about. There has been an exhibit offered in this case, No. 202, and that shows the statement of condition of the Michigan National Bank as of December 31, 1952, a lot of other years, but I am pointing to the 1952 column, and there has been testimony, Professor, that the Michigan National Bank had 26 or approximately 27 million of FHA mortgages at that time, 34 or 35 million of other mortgages, and some 7 million of improvement, FHA improvement loans, and that after deducting the non-residential amount, we had about 70 million out of a total loan resource item of 148 million.

Q. Would you say in your opinion that was a substantial amount of the Michigan National Bank's assets in business, loan accounts?

A. Substantial amount of the loans?

Q. Yes, sir, and wouldn't you say that 70 million in reference to the total resources of 309 million was a substantial (1685) portion of the bank's resources at that time?

A. It is a sizeable proportion.

Q. Sizeable. Pretty great, wasn't it?

A. Sizeable.

Q. 22 per cent, wasn't it? 22 per cent of its business?

A. I don't know the percentage.

Q. Well, you can multiply three times seventy, or 22, rather. That is one fifth, isn't it? You divide 70. 22½ I think the accountants testified to. You will take their word, I assume.

A. I will take the accountants' word.

Q. 22½ per cent, I believe was their figure. You call that a substantial portion of their assets, too?

A. Sizeable portion, sir.

Q. Sizeable. You are sort of afraid of the word "substantial," aren't you?

A. That is a legal term.

Q. It is an English term, has an English meaning, and I am using it in the ordinary English, non-legal term. Do you understand what substantial purports to be, Professor?

A. It has no meaning to me any longer. It has been bandied around.

Q. What was your meaning before it was bandied around, sir?

A. Sizeable, plus.

Q. Now, looking at the Exhibit 205, which shows the operating (1686) statement of the Michigan National Bank, and pointing to the column for the year 1952, the testimony has been, and it shows, that there is income from loans, mortgage loans, of approximately 2 million 6. Isn't that correct?

A. That is correct.

Q. And then I think the testimony in our Exhibit 104 shows an additional 500, almost 600 thousand dollars, making 3 million 1.

Would you say that is a sizeable—to use your term—amount of the total interest income of \$11,000,000 by the bank in 1952?

A. I would.

Q. Would you go so far as to say it was substantial in this case?

A. I don't know what it means.

Q. Would 26 per cent of the total interest income be considered substantial by you, sir, in your opinion?

A. It is important.

Q. It is important.

A. Sizeable.

Q. Important and sizeable. You go that far?

A. That is right.

Q. Now, you talk about a bank having a monetary function. Would you show me on this operating income statement what revenues are derived from that monetary function? I am again (1687) showing you Exhibit 205.

A. The monetary function, sir, is rather difficult to identify on the income statement. It is much more identifiable on the asset and liability items.

Q. Can you point out anything from the monetary function that you described?

A. Sir, the monetary function that I described had reference to the demand deposits owned by the bank. The demand deposit can be associated more with the non-earning assets in the form of primary reserve. That is cash, balance of other banks, reserve to the Federal Reserve, items in process of collection.

Q. They earn no money on that; do they?

A. They do not, and also since those funds are subject to check on demand, they have to be kept in fairly liquid form, so that bank managers, I believe, would associate the demand deposits with their most liquid secondary reserve assets, such as shorter term government securities and with their commercial loans, and that would be the largest category on the balance sheet.

Q. Yes.

A. Now, this income statement doesn't separate interest on shorter term securities. It is on all securities. And it does separate mortgage loans. I would be inclined to tie that up with their time deposits.

(1688) Q. Right.

A. And the installment loans perhaps a little more with time than demand deposits. The general loans, which I take it are like industrial, commercial and shorter term, but there would be some term loans. That category, general loan interest, I would have to have defined, but if I am assuming properly that they are larger commercial loans, that item would tie in with the monetary side of the business more than these other assets.

Q. But the biggest earnings are from functions other than the monetary functions you described, isn't that true?

A. No, I don't believe so.

Q. Well, let's go back. Interest on securities.

A. That can be tied with the monetary.

Q. And it can also be tied with time deposits because they run for five years, don't they, generally they vary in duration?

A. What do you mean?

Q. The securities, like government bonds, vary in various durations, isn't that correct?

A. Some of the securities would be associated with time deposits.

Q. And so too the general loans, the longer term loans, made to big industrial corporations, run anywhere from three to five years, isn't that correct, sir?

A. The longer term loans?

(1689) Q. Yes.

A. Would be more associated with time deposits.

Q. And mortgage loans are certainly with time deposits aren't they?

A. No, I would not include all mortgage loans in time deposits. The FHA loans being guaranteed might be.

Q. And that is why they take lower interest rates, because the government guarantees it, isn't that true?

A. That is why banks take lower interest rates.

Q. Yes. They don't make as much.

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(1692) Q. Professor Woodworth, referring back to the changes in the practices of national banks in the early 30's, at least prior to '32, did they not also—did national banks not also change the method of payment by the borrower on residential mortgages from a quarter and semi-annual payment to a monthly amortization plan?

A. All institutions did, including national banks.

Q. Including national banks, and that is another one of the changes that national banks made in their mortgage end of (1693) their business, was it not, sir?

A. Yes.

Q. Now, Professor, to get back to the share investors again, I believe you testified that there wasn't any substantial difference to a share investor, whether he made a share investment or made a deposit; he was interested in the return, wasn't he?

A. And safety.

Q. And safety?

A. Yes.

Q. And he also considered what he would get from a commercial savings bank deposit, did he not?

A. Right.

Q. Is it not true, sir, or do you know that a savings depositor in a commercial bank is a creditor of the bank whereas in Michigan, an investor in shares in the savings and loan is a shareholder in the corporation?

A. That is correct, legally speaking.

Q. Well, let us see factually. The commercial bank agrees to pay an agreed amount of interest to the depositor, does it not?

A. That is correct.

Q. And if it fails to pay that interest, the depositor can sue them or the bank is in default, is it not?

A. That is correct.

(1694) Q. There is no agreed rate of return on savings shares, is there?

A. No agreed rate.

Q. There is an amount that is declared as a dividend by the directors of the savings association, isn't that correct?

A. That is correct.

Q. And if there isn't sufficient earnings, there is no dividend paid?

A. Correct.

Q. And similarly, in a national bank, if the bank doesn't make sufficient earnings, it won't pay or declare a dividend?

A. You are talking about—

Q. (Interposing): On their shares, national bank shares?

A. That is correct.

Q. Now, savings depositors in a national bank don't have any vote, do they?

A. That is correct.

Q. They are merely a creditor of the bank?

A. Correct.

Q. And a savings shareholder has the right to vote, doesn't he?

A. Yes, sir.

Q. Now, in the event of insolvency or liquidation, a depositor is paid first before a shareholder in national banks, isn't he?

A. That is correct.

Q. In the savings and loans, there aren't any depositors, are (1695) there?

A. That is correct.

Q. And, therefore, in liquidation, outside of the small amount of expense or something that might be, the shareholder starts participating immediately, doesn't he?

A. I can't answer this question. I would have to explain my answer.

Q. O.K. The undivided profits and surplus of a savings and loan association goes to the shareholder, doesn't it?

A. In case of liquidation?

Q. Yes, he is the owner, then?

A. In case of a solvent liquidation.

Q. Right, and if the savings and loan association loses money, why, that reflects on the ownership or the interest of the shareholder, doesn't it?

A. It does.

Q. And if it makes money, why, there is more money available for dividends or to put in reserves and so forth, isn't there?

A. That is true.

Q. Yes. Now, an investor in the savings and loan association invests primarily for the return he gets on his investment, doesn't he?

A. And safety of the principal.

Q. And safety, and the fact I think you pointed out before that there are no deposit liabilities in savings associations (1696) makes for greater safety of the investment, doesn't it, than a national bank which has deposit liability, some of which is on demand?

A. What is your comparative? Are you comparing the share account with the time deposit of the bank?

Q. No, I am comparing safety. You said safety and I said safety of shares of savings and loan with shares of a national bank. In a savings and loan, there are no deposit liabilities and in the bank, there is a substantial deposit liability. So, therefore, isn't that the reason why you say shares in savings and loan have a greater degree of safety?

A. Than shares of national bank?

Q. Yes.

A. The answer is yes.

Q. And when a national bank takes time or commercial demand deposits, owing the money and investing that money in assets still owes a dollar amount on the in business, it still owes a dollar amount on the deposit, doesn't it?

A. That is correct.

Q. And therefore, the risk of a shareholder in a national bank of shares is substantially greater than the risk of a shareholder of a savings and loan association which doesn't have all that deposit liability?

A. The risk is substantially greater. The opportunity for gain is also substantially greater.

(1697) Q. And that is true in all types of stock, isn't it?

A. Common stock.

Q. In other words, if I want to invest in a more speculative venture, I stand to make more money in the common stock than if I buy a defensive stock like the public utility company?

A. You stand to lose more.

Q. I stand to make more on speculative, and I stand to lose more, isn't that correct?

A. That is correct.

Q. In other words, if I want a good defensive stock, I buy a high-grade public utility because it doesn't go up much, probably doesn't go down as much, and I don't take as much risk, isn't that correct, sir, as compared—

A. (Interposing): I can't interpret your motives.

Q. I am trying to get your thinking.

A. Are you wishing me to compare the purchase of a public utility common stock with speculative common stock?

Q. Yes, sir.

A. Of course, the public utility of the nature you have described would be a safer investment than a speculative type common stock, an industrial or commercial enterprise.

Q. And the greater risk you take, you might make more money, but you might lose more money?

A. That is correct.

Q. Now, investors, in your opinion, in 1952 or from your knowledge, (1698) is it not true that investors in shares of savings and loan associations were generally of the same economic class as depositors in savings banks?

A. Approximately the same.

Q. And there were a lot of owners of shares of bank stock in the same economic class also?

A. I would want to comment separately on the owners of bank stock.

Q. The purchasers of shares of savings and loan come from all economic classes, do they not?

A. Principally from the lower and the middle income groups. Very small amounts in proportion, in number very small, for the high income group.

Q. Do you know of a Horace Russell, General Counsel of the United States Savings and Loan League, who wrote a book, "Savings and Loan Associations?"

A. I don't know him. I know his name.

Q. Do you know him by reputation?

A. I just heard his name.

Q. Do you know anything about his reputation?

A. No, I do not.

Q. Do you agree or disagree with his statement when he says, on page 1 of the Savings and Loan Associations:

"The savings and loan association is frequently referred to as 'the poor man's bank.' However, it will (1699) be noted that the average account in them is higher than the average savings account in commercial banks, mutual savings banks or postal savings bank, and is probably higher than the average cash value of insurance policies."

A. I presume he is correct. I have no way of repudiating it.

Q. And you agree or disagree with his statement, on page 2:

"An increasing amount of capital is invested in these accounts by perpetual and long-term funds such as cemetery associations, colleges, universities, foundations, fraternal organizations, charitable in-

stitutions and various pension and retirement funds as well as commercial corporations."

A. I would disagree with that statement. The proportion of savings and loan share accounts held by such institutions as mentioned would be in numbers small, infinitesimal, and in proportion to total share account would be nominal.

Q. You disagree with the statement of the General Counsel for the United Savings and Loan League?

A. I do.

Q. And you know of a Mr. Norman Strunk, Executive Vice-President of the United States Savings and Loan League?

A. Yes, I have heard of him. I don't know him personally.

Q. What is his reputation in the savings and loan business?

A. I assume it is very good.

Q. Do you agree or disagree with his statement appearing in the (1700) "Savings and Loan News" of April, 1954:

"A check of the occupations of savers discloses that our institutions have a slightly higher proportion of savers in the executive, professional, merchant or business owners class, 36 per cent, than banks, 32 per cent."

A. I presume that is correct.

Q. You assume it is correct?

A. I have no way of checking it.

Q. And you agree or disagree with his statement, or your opinion, on the "Savers using the facilities of our institutions"—that is savings and loan—"have a slightly higher income than those which typically use banks, though the differences are not significant?"

A. I particularly agree with the last part of that statement.

Q. Well, you referred yesterday in your testimony to the "Savings and Loans principles of the American Savings and Loan Institute," did you not? In your opinion, do you agree or disagree with this statement appearing on page 87 of part 1, relating to savings and loan shares:

"Investments in savings and loan accounts represent an attractive investment for trustees, executors, administrators, guardians and other fiduciaries, financial institutions such as trust companies, insurance companies and credit unions, eleemosynary institutions, (1701) educational institutions, cemetery associations, private business corporations, public depositories and public officials having control of funds. Savings and loan accounts generally offer a favorable rate of return in comparison with interest available on other securities of comparable safety."

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(1702) A. The statement is made by a man who is obviously attempting to put the best foot forward and promote the savings and loan business.

I think the statement is perfectly fair that savings and loan shares offer opportunities in this area. The fact is that the proportion of total savings share accounts in such accounts as you have mentioned in that quotation is very small dollarwise, and the proportion of total number of savings accounts would be infinitesimal.

Q. That is your opinion?

A. That is my opinion. So far as the idea that savings share accounts are the best possible commitment for that type of funds, it raises a large investment ques-

tion which I could comment on, but I doubt whether it has relevancy here in this proceeding.

Q. Do you happen to have information of the number of accounts in savings and loan associations in Michigan in excess of \$10,000?

(1703) A. I do not.

Q. You do not?

A. No.

Q. And do you happen to have a record of the number of corporate investors or trustee investors in savings and loan in the State of Michigan?

A. I do not.

Q. And you don't have that information in respect to savings and loans operating in cities where the Michigan National Bank operates?

A. I do not.

Q. Now, you know, do you not, Professor, that savings and loan associations in 1952 in Michigan, that it was not necessary for an investor in shares to become a borrower of the association?

A. That is correct.

Q. And you also know, do you not, Professor, that in 1952 it was not necessary for a borrower of a Michigan savings and loan association or federal one operating here to be an investor in the shares?

A. I believe that is correct.

Q. And you also know, do you not, that in 1937, the legislature of Michigan created a new type of shares, of optional shares for savings and loan shareholders? Do you know that or don't you?

(1704) A. I believe I can say that I was aware of that change.

Q. What is the change that you were aware of?

A. The change that a share account depositor or share account holder could put in any amount of money

at any time or withdraw any amount at any time rather than having to engage in a definite installment program of any type.

Q. In other words, he wasn't committed to buy a definite amount of shares over a period of time?

A. That is correct.

Q. He could buy one set of shares and be through with it if he wanted?

A. He was put in the same position as a depositor in that sense.

Q. That hadn't obtained before 1937 as to the type of shares that could be purchased in a Michigan savings and loan association, had it?

A. I am not informed on that completely.

Q. Now, since a depositor, a savings shareholder did not have to be a borrower, his main interest was in his rate of return from the association, wasn't it?

A. And his safety.

Q. And the safety of his investment. And since a borrower of the association did not have to be a shareholder investor, his only interest was in getting the best and most advantageous type of mortgage he could get, isn't it?

A. If you include all of his desires and wants in getting and (1705) borrowing of either bank or savings and loan, the answer is yes.

Q. Right. This wasn't the method that was employed originally in the operation of savings and loan associations, was it, Professor?

A. No.

Q. Originally—

Mr. Dexter (interposing): Would you define your date, originally?

Q. (By Mr. Klein): In the earlier times.

Mr. Dexter: Specifically the date, Mr. Klein.

A. I would want a date.

Q. (By Mr. Klein): Well, you pick the date. You know the facts. You are the expert, sir. You give your own dates. Originally—you went back to the early history in this country. . . Wasn't it true that a borrower had to be an investor in shares?

A. Before 1900, we will say, if you can use that term,

Q. In Michigan?

Q. (By Mr. Klein): Well, let us start since the Act 50 of 1887 in Michigan.

A. I am not familiar with the Michigan law.

Q. You don't know about the Michigan law?

(1706) A. That is correct. All of my observations are—

Q. (Interposing): In general, then, in the early times that savings and loans were operated in this country, and you gave same dates in your testimony—an investor had to be a borrower or a borrower had to be an investor, and vice versa, isn't that true?

A. It is true except that a borrower naturally would be very small of the shareholders; it was more or less of a nominal proportion.

Q. In other words, the shareholders would be committed to make a definite or weekly or monthly payment to the Association for a period of time?

A. Yes.

Q. And if they failed to honor their obligation, there would be fines and penalties against them?

A. Yes. I am sure there were some penalties.

Q. And then of the group of shareholders who were thus committed to make weekly or monthly payments out of their earnings or whatever else they had them from, the right to borrow was auctioned off, wasn't it?

A. I don't know, sir.

Q. Well, the only borrowers could be from shareholders of the association; they didn't have outside borrowers except from shareholders?

A. I think that is correct.

(1707) Q. And any borrower had to subscribe for as many investment shares as would equal the dollar amount of his loan, isn't that true, sir?

A. I don't know.

Q. You didn't say that it was incorrect?

A. I don't know.

Q. You testified either yesterday or today that in your opinion savings and loan associations hadn't changed their business practices. Do you now want to change your testimony in view of the fact that in 1952—

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A. I was talking about the period even before 1900. My previous testimony, if that is what you are speaking of, I recall the last question asked me this morning that savings and loan associations had not changed their business in any substantial way since 1930. I am using the term "substantial."

Q. You know what it means this time, it that right?

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(1708) Q. But there had been substantial changes in building and loan associations from the original method of operating of poor people committing themselves to weekly or monthly commitments in savings from which they could borrow to build homes, isn't that correct, sir?

A. From the earliest days, there have been considerable changes in the technical methods by which this type of organization operates but there have not been substantial changes in the character of the business in terms

of accumulating small thrift accounts and lending those accounts for home building purposes.

Q. But the truth is, now, you have already testified and there has been an abundance of testimony that investors were primarily interested in the return from their investment and safety, isn't that true?

A. Yes, investors are primarily interested in those two things.

Q. And the borrowers were not interested in the investors, were (1709) they?

A. (Pause.)

Q. The borrowers borrowing money on a loan, on a mortgage weren't interested in getting the best mortgage they could?

A. You are referring now—

Q. (Interposing): Now, as of 1952.

A. That is correct.

Q. And the borrower didn't have to be an investor any more?

A. That is correct.

Q. That is a substantial change, isn't it, in the procedure of operation?

A. In the procedure of operation, but not in any substance.

Q. Not of any substance? Do you know a Dr. C. James Pilcher of the University of Michigan, School of Business Administration?

A. I know him quite well, sir.

Q. And what is his position at the University of Michigan?

A. He is an Associate Professor of Finance.

Q. And is he highly regarded in his field?

A. I think he is, sir.

Q. Do you agree or disagree with the following statement attributed to Dr. C. James Pilcher, a colleague of yours at the University of Michigan, and I quote—

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(1710) A. Is this a statement of Mr. Pilcher?

Q. I think it is, sir, and it is attributable to him. We say it is, but regardless of whether it is or isn't, I will ask you the question and you express an opinion as an expert:

“Up until 1951, savings and loan associations were exempt from all Federal income taxes. In the early days of these institutions, the transactions of the associations were confined to members and no one could participate in the benefits they afforded without becoming a shareholder. Individuals became investing members in the expectation of ultimately becoming borrowing members as well. Members could not cancel their membership or withdraw their shares, before maturity without incurring heavy penalties. The fact that the members were both the borrowers and the lenders was the essence of the ‘mutuality’ of these organizations (1711) and the basis for the association’s tax exempt status. Although some of the old forms have been preserved to the present day, few of the associations have retained the substance of their early mutuality. . . .”

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“The steady decline in the proportion of share accumulation loans is evidence that the character of these organizations has changed. More and more investing members are becoming simply savers, while borrowing members find dealing with these savings and loan associations only technically different from dealing with other mortgage lending in-

stitutions in which the lending group is distinct from the borrower."

Now, I will hand it to you, and you can read it sentence by sentence and comment if you wish, sir, your opinion.

A. "Until 1951, savings and loan associations were exempt from (1712) all Federal income taxes."

I believe that is true.

"In the early days of these institutions, the transactions of the associations were confined to members and no one could participate in the benefits they afforded without becoming a shareholder."

I would agree with that, if they confine early days to 1900 or before.

"Individuals became investing members with the expectation of ultimately becoming borrowing members as well."

I would disagree with that statement. There was no obligation so far as I know to borrow. One could own share accounts in any amount within the limits of the total amount of share accounts that would be sold by the association, and they weren't forced to borrow.

Q. The word is "expectation", and not "obligation".

A. I don't know about the expectation, but I would assume there were a great many share owners then that had no expectation of borrowing, and if they did have, it might have been very vague, so that at that time there was a very definite separation, in fact, between the shareholders who did want to borrow and those who did not want to borrow.

"Members could not cancel their memberships or withdraw their shares before maturity without incurring heavy (1713) penalties."

I would agree that there were penalties, but I don't know how heavy they were.

"The fact that the members were both the borrowers and the lenders was the essence of mutuality of these organizations and the basis for the association's tax exempt status."

I would disagree with that statement. I think the fact that the members were both borrowers and lenders was a rather superficial aspect of the organization. The mutuality in substance applies to the analogy with a mutual savings bank which we call a mutual organization. There was no tieup ever between the depositors and the lenders of those organizations. The main point is that they are not private profit institutions with capital stock that is bought and sold on the markets, and, as we have discussed before, is a sort of an investment where you take great chance of gain and great chance of loss.

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"Although some of the old forms have been preserved to the present day, few of the associations have retained the substance of their early mutuality."

(1714) I would disagree with that statement because the mutuality is based on substantial facts that I just commented on and not on the mere superficiality that I would term one of whether or not there is some more or less tenuous connection between being a borrower and a lender.

I just commented on the fact that a shareholder did not have to borrow at any time so far as I know in the early associations.

Q. But he couldn't borrow unless he was an investor, could he?

A. No, that is true, in the early days.

Q. Yes.

A. "Instead a steady decline in the proportion of share accumulation loans is evidence that the character of these organizations has changed."

Yes, changed in that superficial way that I have just explained, but not in substance.

"More and more investing members are becoming simply savers, while borrowing members find dealing with these savings and loan associations only technically different from dealing with other mortgage lending institutions in which the lending group is distinct from the borrowing."

I agree with that statement.

.

(1715) Q. By whom were you retained to testify in this case?

A. By the Department of Revenue.

Q. Have you consulted with the building and loan people?

A. I have sat in on conferences with counsel for building and loan.

Q. Quite a bit of them?

A. Yes.

Q. And you know they are very interested in having their taxes kept at the basis it is? You know that, don't you?

A. I know they are interested.

Q. Very interested, at least interested enough to spend a lot of time with you?

A. That is correct.

.

Q. . . . Do you agree or disagree with the statement of Judge Taft, later Chief Justice of the Supreme Court of the United States, when he ruled in a building and loan case, the Hubbard case, "The chief object of building (1716) associations is to encourage the building of small houses by poor people and the savings from their earnings week by week of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house."

Wasn't that the early purpose of building and loan associations?

(1717) A. That was the main purpose in the early days.

Q. In the early days. But now since you don't have to be an investor to be a borrower, that isn't the purpose any more to that degree, is it?

A. Not stated in those words. In substance, it is very similar. I presume you don't want me to state my position on it.

Q. Well, you testified this morning that a borrower isn't any different from a borrower in a bank on the same terms or competitive banks; that is correct, isn't it?

A. That is right.

Q. And an investor is interested in return on his investment, and he isn't interested in the borrowing except to make as much money as he can on his investment; isn't that correct?

A. That's correct.

Q. Now, you talked about mutuality. Now, let us see what you mean by mutuality.

Do you mean that it is mutual because shareholders all put their money in a common enterprise and share the earnings from that common enterprise? Is that what you mean by mutuality in 1952, savings and loan associations?

A. Yes, as opposed to private enterprise.

Q. And they put their money in the enterprise to make a return on their money, don't they?

A. And for safety.

Q. With safety. And the higher the return they get consistent (1718) with safety, the better they like it; isn't that true?

A. Of course.

Q. And the higher the return on the shares, the more people are attracted to investing in those shares; isn't that true, sir?

A. Yes, but that is not the only consideration.

Q. No, but they are interested in earning money on their investment?

A. Of course.

Q. And is that what you mean by mutuality, that they all put their money in a common enterprise on which they hope to make a profit and a return consistent with safety? Is that what you mean by mutuality?

A. Yes.

Q. And the same is true of a shareholder in a national bank. All shareholders put their money in expecting to have the company make money, and they get dividends on it; isn't that true, sir?

A. Yes.

Q. And the same talk of mutuality of mutual savings bank is the same as you discussed for savings and loan associations, isn't it, sir, the same kind of thing as far as mutuality is concerned?

A. Mutuality between savings and loans and mutual savings banks is about the same proposition.

.

(1719) *Re-direct Examination*

By Mr. Dexter:

Q. Now, before lunch, Professor Woodworth, I believe that Mr. Klein asked you if there had been a large growth in the mortgage business of national banks since 1930, and I believe your answer was "sizeable."

Would you explain what you mean by "sizeable"?

A. Mr. Klein, as I recall, was talking about growth in dollars of real estate loans. I said "sizeable" meaning also in dollars.

In order to define that term, extent of growth, whether we call it sizeable or important or what, we need to take into consideration the fact that dollars have changed markedly since 1930.

I think the records would show that the value of the dollar is not much more than a third of what it was in the early thirties. Prices have gone up, in other words, three times. So from that standpoint, there would have to be three times as many dollars now in real estate loans or any other dollar category we are talking about as there was at that time in order to have the same real income or real assets reflected.

Now, all apart from this more or less superficial growth in dollars that is tied in with inflation of the dollar is the substantial growth this country—I had better not use (1720) that term, sir—the important growth this country has experienced in real terms, which has been in total output, total real national income, 3 per cent, approximately, a year.

In 1930 it was—well, let's see. This case, 22 years ago, up to 1952—so that there would in dollar terms have been an expectation of perhaps at least two-thirds growth in real estate loans in other dollar categories just from the standpoint of real growth; but I should

think that if we are considering this matter in all its aspects, we ought to think of it proportionately.

That is, I think you will find that the record that we have submitted shows that in 1930, the proportion of total real estate loans of national banks to their total assets was 5.1 per cent, and I believe, if my memory serves me well, at the end of 1952 that proportion was 7.6 per cent compared with 5.1 per cent. I would call that a very moderate change over a 22-year period. In fact, when you spread it out over 22 years, it is rather significant proportionately.

And in terms of residential loans, in '52 the proportion, as I recall, was 6 per cent to total assets of national banks in 1952.

So that we ought to look upon that growth both from a proportionate standpoint and in real terms:

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(1721) *Re-cross Examination*

By Mr. Klein:

Q. I think your testimony was that national banks could hardly make any residential loans in 1927?

A. I didn't say 1927. I said 1930.

Q. I am talking 1927 now.

A. The McFadden Act was passed in 1927. That opened up the opportunity for the national banks to make loans for five years.

Q. But they were limited only to five years.

A. Five years.

Q. And then they were liberalized when, sir?

A. Liberalized further in 1934 and 1935.

Q. Ten years, and then twenty and twenty-five years on FHA.

A. Yes.

Q. Don't you think that accounts for a great deal of growth of national banks in the residential mortgage business?

A. Of course the growth that has happened has been due to the liberalization. Otherwise, it wouldn't have taken place.

Q. And it has been tremendous—almost from zero in '27 to what it is today; isn't that correct, sir?

A. The growth in dollars has been large. I have just commented on the fact that that is, to a very large extent, threefold due to the inflationary rise of prices, and to a large extent, you expect your national banks to grow with the economy, and (1722) I would, too, so that a very large part of the segment of it is the real growth.

Q. Professor, in 1927 national banks could hardly make a real estate loan on residential property except for one year; isn't that correct?

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A. Before the McFadden Act, which was passed, as I recall, in February of 1927, the national banks were limited to making real estate loans to one year maturity, to be renewed, of course.

Q. (By Mr. Klein): Short term, wasn't it, and then it was made five years, which is a short term, isn't it, as far as mortgages go?

A. That is correct.

Q. And then it was made ten years, which is a longer term?

A. Yes.

Q. And then they were permitted twenty and twenty-five years, in encouragement for national banks to grant mortgages on residential homes; isn't that true, Professor? You don't want to change your testimony on that, do you?

A. No, I don't want to change my testimony.

Q. And the figures of the Michigan National Bank show, I think, that 22½ per cent of their assets as at December 31, 1952 was invested in residential mortgages or improvement loans. I (1723) think you said a very important—to get your words, a sizeable and important amount. Isn't that correct?

A. Yes.

Q. And that compares with 7 per cent, the national average of national banks you have just quoted?

A. I don't recall the 22 per cent. You are reading that into the record.

Q. It is \$70,000,000 out of \$309,000,000 assets.

A. Well, then it is 22 per cent.

Q. As compared with 7 per cent which you say is the national average of national banks?

A. Yes.

(1724) Q. So the Michigan National Bank had three times the national average, didn't it?

A. That is correct.

Q. And its income from operations on that type of loan was 26 per cent of its total income, interest income from all loans and you said that was sizeable and important, did you not?

A. Yes, that is sizeable.

Q. And important?

A. Important.

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The Court: I would like to ask a few questions for my own edification. If either counsel wants to object, it would be perfectly all right.

One of the things that we find referred to originally in the Supreme Court cases that have been talked about by the lawyers and will be considered by me on mutual savings banks.

Apparently, it was a New York organization of that type—I have forgotten—New Haven or where it was—involved in the Bank Redemption case, and there was one out in Iowa, I think. At least, there apparently were such things as mutual savings.

Can you tell me just how they operate? To shorten it up, I will state as I understand it, it had no stock and (1725) at least in one of those states, the trustees who were operating it were appointed by the state.

I don't know whether that was symptomatic of the whole institution or one particular state.

Have you made a study of the nature of those animals so that you can tell me a little about them?

A. I can tell you in general. I have served as a trustee for one of those institutions.

Mr. Dexter: I think it is in the record, 1936 through 1952.

A. 22 years. I cannot remember when I took the position, but the background is that usually a few public spirited citizens in a community would start up an organization of that kind and probably at the outset simply make their own deposits, enough of a deposit to meet the law to permit such an organization and then they had an organization called the trustees which was a group that were not elected by depositors but were self-perpetuating. There actually is what is called in most cases a corporation which is a larger group represented by the depositors and then they elect a smaller number of trustees that actually manage the bank. There is no capital stock in the sense of a private commercial bank. The funds that they have above the amount of deposits are called their capital funds and it would be comparable to these surplus and reserves of savings and loan associations. They are not (1726) organized to make a profit. It is a private group. The trustees served as a com-

munity proposition or were paid a very nominal fee of a dollar or two dollars to attend trustee meetings. The interest rate paid was declared by the trustees in their discretion; any net profit above that was carried to surplus and undivided profits of the mutual savings bank.

The Court: In the first place, their deposits were all savings deposits?

A. All savings deposits.

The Court: Now, when they loan money out, how do they determine who borrows the money? The trustee or did they have certain standards of poor people or something else?

A. It was up to the trustees. The money was put into local real estate mortgages, mostly home loans just as is true of the savings and loan association.

The Court: Did they compete as far as the rate of interest was concerned with other institutions that were loaning money?

A. Yes.

The Court: That is four or five per cent or whatever it might be, whatever might be the going rate?

A. They had to meet competition, whether it is from a commercial bank or a cooperative bank or savings and loan association.

(1727) The Court: Did they cut it down? Did they undersell?

A. No.

The Court: What happened to their profits? They must have had some? All of these other institutions that we have been hearing about here like national banks and building and loan and savings and loan have profits.

You say they go into reserve, capital and reserve, but they don't build up to hundreds of millions of dollars, do they, or anything of that sort? Over a hundred years, you could get quite a lot of them.

A. The capital funds, so-called, the surplus and undivided profits is usually kept somewhere between eight and twelve per cent of the total assets, and when a mutual savings bank has capital funds with that protection they are in a position to pay out all of the earnings into dividends or interest.

• The Court: Dividends (to whom?

A. Dividends to the depositors who are comparable to the savings share account holders in the eyes of everyone who is in the community.

The Court: The depositor makes any profit over and above those reserves that you are talking about?

A. That is right. There is no group that has any special profit out of it. In fact, like a good many community ventures, the trustees usually give quite a bit of time to it, but are (1728) not paid as such for their time.

The Court: And do the depositors have a fixed rate which is guaranteed to them?

A. No.

The Court: Or are they something like the building and loan associations?

A. It is like the building and loan; it can be raised or lowered. There is no guaranty.

The Court: It depends on earnings?

A. They are called deposits, but I don't know. I think under the law, it might still be regarded as creditors, but so far as the dividend rate goes, that is entirely up to the trustees.

The Court: I see.

(1729) Q. (By Mr. Klein): You are talking about the time you were on the board. That is recent times, you are talking about.

A. That is right.

Q. You are not talking about the early—

A. (Interposing): I think the character of the mutual savings bank has been much the same.

Q. You are not talking about the early times. You are talking about the time you were on the board, and that is the years you stated.

A. I am talking about, we will say, any time from 1930 to the present time.

Q. Yes, sir.

The Court: Have you made any study of them in connection with your scholastic work at all? Do you know anything about their history, whether this plan that you have talked about here was a plan back before 1900 at all, or would that be purely guess work?

A. The mutual savings bank go way back in our history.

The Court: I thought you testified to one being formed in 1809.

A. Right at the turn of the century. It is a little bit vague just when the first one was formed, but they went back, I believe, to 1799, one in Birmingham, England, which I believe was the first mutual savings bank.

The Court: And this method of operation you (1730) described, do you know from your studies where they did use substantially that method? During the nineteenth century, 1850 on, would you say?

A. Yes, the mutual savings bank of New England and New York State and New Jersey. Principally they are in that northeast section of the country. There are somewhat over 500 of them now, but their history goes a long way back, and they have been substantially under that same plan from the very beginning, mutual in the sense I have described, without any private profit group getting more from the operations, as gaining or losing from the success or failure of the operation.

The Court: In view of the fact that the Court brought this out, has either counsel—I am thinking, of course, about what I am going to have in mind as background material when I read this Mercantile case and the other cases which involve those mutual savings banks. Does either counsel have anything he wants to say by adding to what the Professor said or contradict him in any way with respect to the nature of those institutions?

Mr. Van Zile: My feeling is—I don't propose to have made a study—that the mutual savings bank in New York has undergone a change from the days of the Mercantile case in the 1880's until the present day. Also Davenport and Bank of Redemption cases.

The Court: The Bank of Redemption case, I think (1731) pointed out some differences of the laws of the different states, but rather minor, at least according to the Supreme Court.

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(1735) FAIRLES, RUSSELL, was thereupon called as a witness in rebuttal on behalf of the plaintiff, and, having been previously duly sworn, testified as follows:

Re-direct Examination

By Mr. Klein:

Q. Mr. Fairles, I will show you a document of one page which has been marked Plaintiff's Exhibit 105, and ask you what it is? Don't say what is in it, just say what it is.

A. It is a report covering the transfer of common stock of Michigan National Bank for the calendar year 1952, showing the number of shares transferred.

Q. And the proportion to the number of shares?

A. The proportion to the total outstanding as of December 31, 1952.

Q. And that correctly reflects the records shown in your stock transfer ledger?

A. It does.

Q. Was it made under your direction and supervision?

A. It was.

Mr. Klein: I should like to offer Plaintiff's Exhibit 105 in evidence.

(1736) Mr. Dexter: No objection as to authenticity, but other objections as to further exhibits on the part of claimant are not waived.

The Court: It may be received.

Q. (By Mr. Klein): And that shows, does it not, that in the year 1952, 42,561 shares, or 8½ per cent of the total outstanding stock was transferred in 1952?

A. That is correct.

Q. I will show you Exhibit 106 and 107 and 108. Would you first describe what Exhibit 106 is, sir?

A. Exhibit 106 shows Industrial Savings & Loan Association, now known as the People's Savings & Loan Association, Battle Creek, Michigan, maturity analysis of conventional real estate mortgage loans made during the year 1952.

Q. And from what did you compile that exhibit, sir?

A. We compiled this exhibit from the work sheets of the Savings & Loan Division of the Secretary of State's office.

Q. And you worked in getting that information along with the representative of the Department of Revenue of the State of Michigan?

A. We did.

Q. This was done yesterday afternoon?

(1737) A. With the examiners. That's right, we did.

Q. And the exhibit shows the years of maturity by various years, does it not?

A. It shows the number of years to maturity.

Q. The number of loans?

A. And the number of loans in those various categories.

Q. And the percentage in each category according to term to the total?

A. That is correct.

Q. And the next is the total amount of each category of loan made—that is, the term?

A. That's correct.

Q. Then the percentage of that amount to the total amount?

A. That is correct.

Q. Then the total aggregate number of years to maturity. What do you mean by that—by adding up all of the maturity years in all of those 305 mortgages, referring to 106, now?

A. That is correct. For instance, taking the first one, it shows four to five years. We took $4\frac{1}{2}$, halfway in between, multiplied by one, and that would give the 4.5, and we followed the same procedure for the balance of the years under the classification of maturity.

(1738) Q. And you divide that aggregate amount by the total number of loans?

A. 305.

Q. And the result is that the aggregate term or number of years to maturity by number of loans is eleven years?

A. That is correct.

Q. And then, the appraisal analysis, you built that up out of these records too, have you not?

A. That is correct.

Q. Showing the number more than sixty per cent and the number and amount less than sixty per cent?

A. Sixty per cent or less; over sixty per cent.

Q. Yes.

A. That is right.

Q. And then, in the farthest column you show average aggregate appraisal by number of loans; how did you do that one, and the column before that, total of the appraisal percentage, what did you do? Add up all of the appraisals or what? How did you get the last figure of fifty-four per cent?

A. We added all of the appraisal percentages, the 176 loans in the first category, the percentages totalled 8,101; we divided that by 176 which gave us forty-six per cent.

Q. You took the total amount, actual amount, though, did you not?

A. The total actual amount of the percentages.

(1739) Q. In other words,—

A. (Interposing): And those over sixty per cent.

Q. In other words, you took 50, 57, 54, whatever the figure was for each loan; you added it to get the 8,101?

A. That is correct.

Q. And then you took the actual percentage or ratio to get the 8420, did you not?

A. The same procedure.

Q. In other words, you took the actual term for the last column and the column before—

A. The actual appraisal percentage and we added them, that is right.

Q. And you came up with fifty-four per cent?

A. And for the total we came up with fifty-four per cent.

Q. 107 is the same kind of analysis for the Marshall Savings and Loan Association, conventional loans?

A. That is correct.

Q. And that was prepared in the same way?

A. That is correct.

Q. And Exhibit 108 was for the Saginaw Savings and Loan Association, conventional loans?

A. That is correct.

Q. Made in the same way?

A. That is correct.

Q. Now, why didn't you make the other analysis for the other (1740) savings associations?

A. We made the analysis for these particular three because they were the only three that the auditors had information on their work sheets that showed the monthly payment for principal and interest only. The other showed the taxes and we didn't have information available on the amount of the tax to deduct from the monthly payments in order to determine the number of years to maturity.

Q. And you would have to go to the original records of each savings association and take each mortgage to get the tax to break it down, to final term, wouldn't you?

A. Yes.

Q. And this just happens because these are the way the records are kept by the State governmental agencies?

A. Well, these three happened—

Q. You didn't select them?

A. No, no. We just took them from their records the ones that we could complete a proper report on for comparative purposes.

Mr. Klein: Your Honor, I would like to offer Plaintiff's Exhibits 106, 107, 108 in evidence in connection with the rebuttal or relating to defendants' exhibit series 200.

Mr. Dexter: Your Honor, I will object to them as not being proper rebuttal evidence.

(1741) The Court: . . . they are received.

Q. (By Mr. Klein): Mr. Fairles, in addition to your conventional loans, I take the record shows you made a substantial amount of FHA and VA loans in 1952.

A. We did.

Q. (By Mr. Klein): And they were for what term?

(1742) A. They were for twenty to twenty-five years.

Q. And the average interest rate of VA?

A. The interest rate was four and a quarter per cent.

916a

Exhibits are bound in a separate volume.

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VOLUME III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 155

MICHIGAN NATIONAL BANK, ET AL.,
APPELLANTS,

vs.

MICHIGAN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

FILED JUNE 17, 1960

PROBABLE JURISDICTION NOTED OCTOBER 10, 1960

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Michigan National Bank—1952 Intangibles Tax Return

MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURN

MI-1033 691628 E 1 900400

BANKS AND

TRUST COMPANIES

CALENDAR YEAR FOR

The Michigan National Bank

Lansing, Michigan

Pay to Order of M. N. Bank

9-0-0

Department of Revenue

R.D.-374 (Rev. 1952)

Do Not Write Here

Int—LU

0.00

700400

Deposit only Dept. of Revenue
L. M. King, Comptroller

	Amount	Tax
MI-1033 691628 E 1 900400	Int—68	0.00
Total Deposits as of December 31, 1952	282,500,200.99	
Less deposits of governmental units as of December 31	2,218,500.73	
Less Certified checks, cashiers' checks, etc. as of December 31		
Total deductions	31,708,393.26	
Net Deposit liability subject to tax	250,791,807.63	
Payment at 1/35 of 1% (rate per \$1,000.00)		320.91
Elects to pay and charge back to depositor under Section 4, Public Act 1951		
Total Deposits as of Subsequent Date November 30, 1952		
Less Exempt items (see per attached schedule showing nature, address and accounts on deposit on retroactive date and reason for exemption)		
Net deposit liability subject to tax		
Intangibles tax at 1/35 of 1% (rate per \$1,000.00)		
Less 3% of tax as compensation for collection		
Net amount of Intangibles Tax payable		
Elects to pay for Depositor and charges tax under Section 4, Public Act 1951		
Total Deposits as of Subsequent Date November 30, 1952		
Less Exempt items (see per attached schedule showing nature, address and accounts on deposit on retroactive date and reason for exemption)		
Net deposit liability subject to tax		
Intangibles Tax at 1/35 of 1% (rate per \$1,000.00)		
Total Tax on Deposits	(31)	320.91
Total Tax on Bank (From schedule on reverse side)	(10)	12.50
TOTAL AMOUNT DUE	(31)	333.41

Michigan National Bank—1952 Intangibles Tax Return

TAX ON STOCK

and on basis of Par Value or Book Value, whichever is greater, as follows:

1 Total Outstanding Shares	2 Par Value per Share	3 Book Value per Share	4 Total Par Value	5 Total Book Value	6 Tax on Par Value	7 Tax on Book Value
500,000	\$10.00	\$10.00	5,000,000.00	5,000,000.00	17,500.00	
123,333 1/3	\$8.00	\$8.00	1,000,000.00	1,000,000.00	20,369.79	1,000.00
TOTAL						18,500.00

and on basis of Book Value (Sec. 26)

1 Total Outstanding Shares	2 Book Value per Share	3 Total Book Value	4 Total Par Value	5 Tax on Book Value	6 Tax on Par Value
See letter attached					
TOTAL					

TOTAL TAX ON STOCK (Items 1 and 2) Transfer to Page one

18,500.00

COMPUTATION OF BOOK VALUE PER SHARE
(Attach separate Schedule if necessary)

On June 12, 1953

has given for the purpose of the hearing and has come to the conclusion that the action of the Michigan National Bank was lawful and that the same was not an abuse of the discretion of the Michigan National Bank.

Therefore, the determination of the Michigan National Bank is hereby confirmed and the same is hereby affirmed.

Yours very truly,

Clarence W. [Name]

Deputy Commissioner

Intent to Assess Deficiency for 1952

EXHIBIT 1

November 2, 1953

Michigan National Bank
Lansing, Michigan
Attention: Howard Stoddard—President

Gentlemen:

Re: Intangibles Tax Account No. 900400
Intent to Assess No. F 26730

Pursuant to your formal request on the above mentioned intent to assess, a hearing, as provided in the statute, was held on June 12, 1953.

This department has given careful consideration to the matters raised at the hearing and has come to the conclusion that the position of the Michigan National Bank is not well founded and that the assessment should issue.

It is, therefore, the determination of this department that its intent to assess No. F 26730 in the total amount of \$49,929.27 is hereby confirmed and that the date on this assessment shall be considered to read November 2, 1953.

Yours very respectfully,

Clarence W. Lock
Deputy Commission

CWL:ejc

cc—Collection Division

Payment Under Protest of Assessed Deficiency

MICHIGAN NATIONAL BANK

Battle Creek Flint Grand Rapids Lansing
Marshall Port Huron Saginaw
Lansing, Michigan

November 10, 1953

Department of Revenue
Lansing, Michigan

Dear Sirs:

Payment under protest is made concurrently herewith of the assessment of intangibles tax by Department letter of November 2, 1953, directed to the undersigned conferring Intent to Assess No. F 26730, sent with said letter. The grounds of said protest are that:

- (a) said tax is, in the words of the statute levying the same, on the "privilege of ownership" and the privilege of ownership of shares of national banks is not subject to tax by a state; and
- (b) the tax is "at a greater rate than is assessed upon other monied capital coming into competition with the business of national banks" and in particular this Bank, and is as to this Bank violative of Section 548 of Title XII of the United States Code.

In addition to said grounds of protest herein set forth, the undersigned reserves all rights to recover such payment or any part thereof which would be available if said grounds had not been stated.

Very truly yours,

Russell Fairles
Vice President

Exhibit 1

921a

*Michigan National Bank—1952 Amended Intangibles
Tax Return*

**MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURN**

**Banks and Trust Companies
Amended**

Calendar Year 1952

**Michigan National Bank
Lansing Mich**

900400 9-08-03 13

This return is submitted under the provisions of section 2a of the
Michigan Intangibles Tax Act as amended by the 1953 legislature.

TAX ON STOCK

		Tax @ 5 1/2 mills
Total Preferred Capital.....	\$1,000,000.00	5,500.00
Common Capital	\$5,000,000.00	
Surplus	5,000,000.00	
Undivided Profits	1,396,522.59	
Total	11,396,522.59	62,680.87
	Total Tax	68,180.87
1952 Tax Previously paid on Stock....		18,500.00
Balance Due or Overpayment.....		49,680.87
	Interest	248.40
	Total	49,929.27

922a

Exhibit 1

Receipt for 1952 Payment of Deficiency

MICHIGAN DEPARTMENT OF REVENUE

Lansing

R. D. 53A

Rev. Jan. 53

Pay to Order of D. Hale Brake,
State TreasurerDeposit only-Dept. of Revenue
L. M. Nims, Comm.

INTANGIBLES TAX

	Nov. 13-53	661303	E 1	900400	Int—Ck	49,929.27
11-10-53	900400	9	03	13	13	
Date	Account Number	Kind	Class	Type	County	

Name Michigan National Bank

Address Lansing

ASSESSMENT PAYMENT SECTION

Payment applied as—

Tax	\$49,680.87
License Fee \$.... Pen. \$.... Int. \$248.40	248.40

Total Amount Paid \$49,929.27

Remittance Clerk JH

Savings and Loan Associations—1952 Intangibles Tax Returns

EXHIBIT 2

EXHIBIT 2-A

MICHIGAN DEPARTMENT OF REVENUE INTANGIBLES TAX RETURN

Building and Loan and
Savings and Loan Associations
Calendar Year 1952

Calhoun Federal Savings & Loan Ass'n
15 Capital N. E.
Battle Creek, Mich.

900735 9-0-04 C 14

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31	\$10,512,930.	98
Less paid-in value of shares owned by governmental units as of December 31	22,449.	14
Net liability subject to tax	10,490,481.	84
Payment at 1/25 of 1% (40c per \$1,000.00)	(21)	4,196.19
Total Amount Due	(24)	4,196.19

EXHIBIT 2-B

MICHIGAN DEPARTMENT OF REVENUE INTANGIBLES TAX RETURN

Building and Loan and
Savings and Loan Associations
Calendar Year 1952

Industrial Savings & Loan Ass'n.
8 W. Michigan Ave.
Battle Creek, Mich.

900736 9-0-04 C 14

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31	\$5,970,038.94	
Less paid-in value of shares owned by governmental units as of December 31		
Net liability subject to tax	5,970,038.94	
Payment at 1/25 of 1% (40c per \$1,000.00)	(21)	2,388.01
Total Amount Due	(24)	2,388.01

924a

*Exhibits 2-C, 2-D**Savings and Loan Associations—1952 Intangibles
Tax Returns***EXHIBIT 2-C****MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURN****Building and Loan and
Savings and Loan Associations
Calendar Year 1952****First Federal Savings & Loan Ass'n of Flint
126 W. Kearsley
Flint, 3, Mich.****900762 9-0-04 C 06**

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31	\$6,516,203.76	
Less paid-in value of shares owned by governmental units as of December 31		
Net liability subject to tax.....	6,516,203.76	
Payment at 1/25 of 1% (40c per \$1,000.00)..... (21)		2,606.88
Total Amount Due..... (24)		2,604.88

EXHIBIT 2-D**MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURN****Building and Loan and
Savings and Loan Associations
Calendar Year 1952****Detroit & Northern Savings & Loan Ass'n.
200 Quincy St.
Hancock, Mich.****900770 9-0-04 C 71**

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31	\$21,397,311.41	
Less paid-in value of shares owned by governmental units as at December 31	14,520.77	
Net liability subject to tax.....	21,382,790.64	
Payment at 1/25 of 1% (40c per \$1,000.00)..... (21)		8,553.11
Total Amount Due..... (24)		8,553.11

Exhibits 2-E, 2-F

925a

Savings and Loan Associations—1952 Intangibles
Tax Returns

EXHIBIT 2-E

MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURN

Building and Loan and
Savings and Loan Associations
Calendar Year 1952

Grand Rapids Mutual Federal Savings & Loan Ass'n.
301 Monroe Ave. N.W.
Grand Rapids 2, Mich.

900765 9-0-04 C 28

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in shares liability as of December 31	\$15,496,286 43	
Less paid-in value of shares owned by governmental units as of December 31	none	
Net liability subject to tax	15,496,286 43	
Payment at 1/25 of 1% (40c per \$1,000.00)	(21)	6,198.51
Total Amount Due	(24)	6,198.51

EXHIBIT 2-F

MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURN

Building and Loan and
Savings and Loan Associations
Calendar Year 1952

Mutual Home Federal Saving & Loan
88 Market N. W.
Grand Rapids 2, Mich.

900766 9 09 04 28

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31	\$12,658,070.55	
Less paid-in value of shares owned by governmental units as of December 31		
Net liability subject to tax		
Payment at 1/25 of 1% (40c per \$1,000.00)	(21)	5,063.23
Total Amount Due	(24)	5,063.23

*Savings and Loan Associations—1952 Intangibles
Tax Returns*

EXHIBIT 2-G

**MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURN**

Building and Loan and
Savings and Loan Associations
Calendar Year 1952

West Side Federal Savings & Loan
410 Bridge N. W.
Grand Rapids 4, Mich.

900768 9 09 04 C 28

Amount Tax

A. Elects to pay under Section 3a (Rule 14A)
Total paid-in share liability as of De-
cember 31 \$ 4,280,331.46
Less paid-in value of shares owned by
governmental units as of December 31
Net liability subject to tax.....
Payment at 1/25 of 1% (40c per \$1,000.00) (21) 1,712.13

* * * * *

Total Amount Due..... (24) 1,712.13

EXHIBIT 2-H

**MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURN**

Building and Loan and
Savings and Loan Associations
Calendar Year 1952

Capitol Savings & Loan Co.
112 E. Allegan St.
Lansing 1, Mich.

900788 9 09 04 C 13

Amount Tax

A. Elects to pay under Section 3a (Rule 14A)
Total paid-in share liability as of De-
cember 31
Total shareholders' accts. \$18,658,656.94
Less separate dividends.. 355,064.57
Less 10% of Optional Payt.
Sha. 608,654.17 \$17,699,938.20

Less paid-in value of shares owned by
governmental units as of December 31 14,491.99

Net liability subject to tax..... 17,685,446.21²
Payment at 1/25 of 1% (40c per \$1,000.00) (21) 7,074.18

* * * * *

Total Amount Due..... (24) 7,074.18

927a

Exhibits 2-I, 2-J
Savings and Loan Associations—1952 Intangibles
Tax Returns

EXHIBIT 2-I

MICHIGAN DEPARTMENT OF REVENUE
 INTANGIBLES TAX RETURN

Building and Loan and
 Savings and Loan Associations
 Calendar Year 1952

Lansing Savings & Loan Assn.
 117 West Allegan
 Lansing 68, Mich.

900789 9 09 04 C 13

Amount Tax

A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31, 1952.....	\$ 1,456,783.92	
Less paid-in value of shares owned by governmental units as of December 31		
Net liability subject to tax.....		
Payment at 1/25 of 1% (40c per \$1,000.00)..... (21)	582.71	
* * * * *		
Total Amount Due..... (24)	582.71	

EXHIBIT 2-J

MICHIGAN DEPARTMENT OF REVENUE
 INTANGIBLES TAX RETURN

Building and Loan and
 Savings and Loan Associations
 Calendar Year 1952

Union Building & Loan Assn.
 121 West Allegan
 Lansing 68, Mich.

900790 9 09 04 13

Amount Tax

A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31, 1952.....	\$ 4,122,134 00	
Less paid-in value of shares owned by governmental units as of December 31		
Net liability subject to tax.....	4,122,134 00	
Payment at 1/25 of 1% (40c per \$1,000.00)..... (21)	1,648.85	
* * * * *		
Total Amount Due..... (24)	1,648.85	

928a

Exhibits 2-K, 2-L

Savings and Loan Associations—1952 Intangibles
Tax Returns

EXHIBIT 2-K

MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURNBuilding and Loan and
Savings and Loan Associations
Calendar Year 1952East Lansing Building & Loan Assn.
303 Abbott Road
East Lansing, Mich.

900760 9 09 04 13

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31	\$ 3,647,226.59	
Less paid-in value of shares owned by governmental units as of December 31	30,200.00	
Net liability subject to tax	3,617,026.59	
Payment at 1/25 of 1% (40c per \$1,000.00)	(21)	1,446.81
Total Amount Due		(24) 1,446.81

EXHIBIT 2-L

MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURNBuilding and Loan and
Savings and Loan Associations
Calendar Year 1952Marshall Savings & Loan Assn.
227 E. Michigan
Marshall, Michigan

900793 9-09-04 14

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31, 1952	\$612,913 72	
Less paid-in value of shares owned by governmental units as of December 31		
Net liability subject to tax	612,913 72	
Payment at 1/25 of 1% (40c per \$1,000.00)	(21)	245.17
Total Amount Due		(24) 245.17

*Savings and Loan Associations—1952 Intangibles
Tax Returns*

EXHIBIT 2-M

MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURN

Building and Loan and
Savings and Loan Associations
Calendar Year 1952

Homestead Savings & Loan Ass'n.
403 S. Superior
Albion, Mich.

900728 9-0-04 C 14

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31	\$764,563.68	
Less paid-in value of shares owned by governmental units as of December 31 .....	.00	
Net liability subject to tax	764,563.68	
Payment at 1/25 of 1% (40c per \$1,000.00)	(21)	305.83
Total Amount Due	(24)	305.83

EXHIBIT 2-N

MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURN

Building and Loan and
Savings and Loan Associations
Calendar Year 1952

Citizens Federal Savings & Loan Ass'n.
511 Water St.
Port Huron, Mich.

900809 9-0-04 C 07

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31	\$6,776,205 81	
Less paid-in value of shares owned by governmental units as of December 31		
Net liability subject to tax		
Payment at 1/25 of 1% (40c per \$1,000.00)	(21)	2,710.48
Total Amount Due	(24)	2,710.48

930a

*Exhibits 2-O, 2-P**Savings and Loan Associations—1952 Intangibles
Tax Returns*

EXHIBIT 2-O

MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURNBuilding and Loan and
Savings and Loan Associations
Calendar Year 1952First Savings & Loan Ass'n.
124 S. Jefferson
Saginaw, Mich.

900816 9-0-4 C 39

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31	\$14,485,466 37	
Less paid-in value of shares owned by governmental units as of December 31		
Net liability subject to tax.....	14,485,466 37	
Payment at 1/25 of 1% (40c per \$1,000.00)..... (21)		5,794.18
Total Amount Due..... (24)		5,794.18

EXHIBIT 2-P

MICHIGAN DEPARTMENT OF REVENUE
INTANGIBLES TAX RETURNBuilding and Loan and
Savings and Loan Associations
Calendar Year 1952Saginaw Savings & Loan Ass'n.
Michigan Ave. at Cass
Saginaw, Michigan

900817 9-0-04 C 39

	Amount	Tax
A. Elects to pay under Section 3a (Rule 14A)		
Total paid-in share liability as of December 31	6,835,396 48	
Less paid-in value of shares owned by governmental units as of December 31		
Net liability subject to tax.....	6,835,396 48	
Payment at 1/25 of 1% (40c per \$1,000.00)..... (21)		2,734.16
Total Amount Due..... (24)		2,734.16

*Michigan National Bank—Statement of Condition as of
12/31/52*

EXHIBIT 3

REPORT OF CONDITION OF THE MICHIGAN
NATIONAL BANK

Reserve District No. 7

of Lansing, Ingham County, Michigan, at the close of
business on December 31, 1952

Form 2130-A—Call No. 404

TREASURY DEPARTMENT

Office of the Comptroller of the Currency
Statistical—Revised March 1952

ASSETS

	Dollars	Cts.
1. Cash, balances with other banks, including reserve balance, and cash items in process of collection (Schedule D, Item 8).....	46,045,857.65	
2. United States Government obligations, direct and guaranteed (Schedule B, item 10).....	107,803,407.90	
3. Obligations of States and political subdivisions...	None	
4. Other bonds, notes, and debentures.....	None	
5. Corporate stocks (including \$300,000.00 stock of Federal Reserve bank).....	300,000.00	
6. Loans and discounts (including \$8,266.07 overdrafts) (Schedule A, item 12).....	146,411,387.26	
7. Bank premises owned \$2,992,650.33, furniture and fixtures \$939,123.49 (Bank premises owned are subject to \$597,200.00 liens not assumed by bank)	3,931,773.82	
8. Real estate owned other than bank premises.....	4,050.87	
9. Investments and other assets indirectly representing bank premises or other real estate.....	None	
10. Customers' liability to this bank on acceptances outstanding	None	
11. Other assets (total of Schedule H).....	1,305,092.05	
12. Total Assets	305,801,569.55	

*Michigan National Bank—Statement of Condition as of
12/31/52*

LIABILITIES

13. Demand deposits of individuals, partnerships, and corporations (Schedule E, item 1).....	137,353,778.95
14. Time deposits of individuals, partnerships, and corporations (Schedule F, item 1).....	110,864,022.96
15. Deposits of United States Government (including postal savings) (Schedule E, item 2, and Schedule F, item 2).....	9,303,123.84
16. Deposits of States and political subdivisions (Schedule 1, item 3, and Schedule F, item 3)....	19,582,960.77
17. Deposits of banks (Schedule E, items 4 and 5, and Schedule F, items 4 and 5).....	2,577,803.74
18. Other deposits (certified and cashier's checks, etc.) (Schedule E, item 6).....	2,818,510.73
19. Total Deposits (items 13 to 18, inclusive)....	\$282,500,200.09 (Am't not to be extended)
20. Bills payable, rediscounts, and other liabilities for borrowed money	None
21. Mortgages or other liens, \$ None on bank premises and \$ None on other real estate.....	None
22. Acceptances executed by or for account of this bank and outstanding.....	None
23. Other liabilities (total of Schedule I).....	10,262,945.97
24. Total Liabilities	<u>292,763,146.96</u>

CAPITAL ACCOUNTS

25. Capital stock:	
(a) Class A preferred, total par \$1,000,000.00, retirable value \$1,000,000.00 (Rate of dividends on retirable value is 4%)	
(b) Class B preferred, total par \$ None, retirable value \$ None (Rate of dividends on retirable value is%)	6,000,000.00
(c) Common stock, total par \$5,000,000.00.....	
26. Surplus	5,000,000.00
27. Undivided profits	1,396,522.59
28. Reserves (and retirement account for preferred stock)	641,900.00
29. Total Capital Accounts.....	<u>13,038,422.59</u>
30. Total Liabilities and Capital Accounts.....	<u>305,801,569.55</u>

Michigan National Bank—Statement of Condition as of
12/31/52

MEMORANDA

31. Assets pledged or assigned to secure liabilities and for other purposes (including notes and bills re-discounted and securities sold with agreement to repurchase)	18,553,804.68
32. (a) Loans as shown above are after deduction of reserves of (Schedule A, item 11)	1,893,000.00
(b) Securities as shown above are after deduction of reserves of	None
(Optional with banks to report subitems 32(a) and (b))	

I, Miles Grant, Vice President and Cashier, of the above-named bank, do solemnly swear that the above statement is true and that the Schedules on the back of this report fully and correctly represent the true state of the several matters therein contained and set forth, to the best of my knowledge and belief.

Miles D. Grant,
Vice President and Cashier.

Correct.—Attest. H. J. Stoddard,
Mervin T. Coates,
D. M. Shotwell,
Directors.

State of Michigan,
County of Ingham—ss.

Sworn to and subscribed before me this 6th day of January, 1953,
and I hereby certify that I am not an officer or director of this bank.

George D. McKinney, Notary Public.

My commission expires September 3, 1956.
(Notarial Seal)

ASSETS

STATE OF CONNECTICUT
Highway Building Fund
 (all offices)

12-31-52

12-31-51

Cash on Hand
 Clearing and Transit Items
 Federal Reserve Bank
 Due from Other Banks

4,874,982
 15,444,451
 18,044,982
 7,228,077

4,297,368
 16,012,710
 16,677,914
 3,317,104

Total Cash and Due from Banks

16,142,362

10,321,079

United States Securities
 Federal Reserve Stock

109,110,077
 300,000

93,180,938
 270,000

Total Securities

209,440,077

91,450,938

Loans - General
 - FHA Mortgage
 - Other Mortgage
 - Installment

28,698,906
 24,944,797
 34,892,131
 27,828,541

24,844,910
 21,049,583
 33,374,493
 52,622,366

Total Loans

116,364,375

131,931,351

Bank Buildings
 Furniture and Equipment
 Accrued Income Receivable
 Other Assets

2,992,630
 939,123
 644,264
 644,878

2,895,022
 809,175
 560,553
 557,071

Total Other Assets

4,270,895

4,822,232

Total Resources

222,147,723

272,510,223

LIABILITIES

Federal Funds
 State Funds
 County Funds
 City Funds
 Other Public Funds

9,083,123
 646,162
 1,787,099
 6,337,017
 4,327,836

6,208,996
 795,797
 1,414,280
 7,164,096
 2,538,684

Sub-total Public Funds

22,073,240

18,121,656

Treasurer's Checks etc.
 Trust Funds
 Due to Banks
 Commercial deposits

2,818,510
 2,997,182
 2,442,008
 134,336,386

2,016,979
 2,659,529
 2,534,374
 121,118,536

Total Commercial Deposits

140,737,536

146,451,076

Club Deposits
 Time Certificates
 Savings Deposits

313,895
 36,893,649
 80,688,643

265,879
 28,174,359
 74,513,780

Total Savings Deposits

117,895,167

102,954,018

Total Deposits

258,632,703

249,405,095

Accrued Bond Amortization
 Deprec. Building and Equipment
 Dividend Preferred Stock
 Federal Taxes
 Interest and Expenses
 Unearned Income
 Other Liabilities

1,336,649
 -
 -
 2,049,905
 1,185,074
 6,713,399
 204,362

1,151,902
 -
 20,000
 2,147,200
 814,357
 5,440,437
 141,972

Total Other Liabilities

11,389,921

9,717,870

Preferred Stock
 Common Stock
 Surplus
 Profits and Reserves

1,000,000
 5,000,000
 5,000,000
 1,328,432

1,000,000
 4,000,000
 4,000,000
 4,387,257

Total Capital Funds

12,328,432

13,387,257

Total Liabilities

270,167,723

272,510,223

Exhibit 4-A
Michigan National Bank
STATEMENT OF CONDITION

937a

BATTLE CREEK OFFICE

<u>RESOURCES</u>	<u>12-31-52</u>	<u>12-31-51</u>
Cash on Hand	1,083,020	936,304
Clearing and Transit Items	347,354	280,854
Central Office Account	<u>17,523,919</u>	<u>17,473,150</u>
Total Cash and Surplus Funds	<u>18,954,293</u>	<u>18,690,310</u>
Loans - General	3,280,202	2,421,770
Loans - F. N. A. Mortgages	4,844,691	3,479,678
Loans - Other Mortgages	5,814,353	6,086,026
Loans - Installment	<u>5,215,477</u>	<u>4,477,403</u>
Total Loans	<u>18,954,723</u>	<u>16,464,878</u>
Bank Buildings	947,115	983,115
Furniture and Equipment	<u>158,675</u>	<u>139,673</u>
Total Real Estate and Equipment	<u>1,105,790</u>	<u>1,122,988</u>
Overdrafts	6,749	1,387
Accounts Receivable	1,299	507
Miscellaneous	<u>7,290</u>	<u>5,401</u>
Total Other	<u>15,338</u>	<u>7,596</u>
Total Resources	<u>39,030,347</u>	<u>36,285,874</u>

<u>LIABILITIES</u>		
Federal Funds	46,846	63,064
County Funds	302,332	169,735
City Funds	1,052,033	785,268
Other Public Funds	<u>522,493</u>	<u>423,420</u>
Sub-Total Public Funds	<u>1,923,706</u>	<u>1,441,489</u>
Cashier's Checks, etc.	244,714	239,187
Due to Banks	26,677	25,275
Commercial Deposits	<u>17,779,135</u>	<u>16,878,227</u>
Total Commercial Deposits	<u>19,974,233</u>	<u>18,584,179</u>
Club Deposits	120,396	97,020
Time Certificates	4,836,911	4,174,910
Savings Deposits	<u>14,098,806</u>	<u>13,429,764</u>
Total Savings Deposits	<u>19,056,114</u>	<u>17,701,695</u>
Total Deposits	<u>39,030,347</u>	<u>36,285,874</u>
Total Liabilities	<u>39,030,347</u>	<u>36,285,874</u>

STATEMENT OF CONDITION

PLANT OFFICE

<u>RESOURCES</u>	<u>12-31-52</u>	<u>12-31-51</u>
Cash on Hand	376,636	486,737
Clearing and Transit Items	425,217	356,333
Control Office Account	<u>10,217,002</u>	<u>8,940,271</u>
Total Cash and Surplus Funds	<u>11,008,854</u>	<u>9,783,342</u>
Loans - General	872,517	1,174,325
Loans - F. H. A. Mortgages	6,943,609	5,543,339
Loans - Other Mortgages	5,489,040	5,515,351
Loans - Installment	<u>5,622,486</u>	<u>4,532,963</u>
Total Loans	<u>18,545,663</u>	<u>16,765,944</u>
Furniture and Equipment	107,705	100,601
Other Real Estate	<u>4,020</u>	<u>2,481</u>
Total Real Estate and Equipment	<u>111,724</u>	<u>103,082</u>
Overdrafts	57	1,950
Trust Advances	2,000	2,000
Accounts Receivable		96
Miscellaneous	<u>14,572</u>	<u>130,950</u>
Total Other	<u>16,630</u>	<u>134,999</u>
Total Resources	<u>29,682,906</u>	<u>26,787,367</u>
<u>LIABILITIES</u>		
Fiducial Funds	1,229,193	1,112,793
County Funds	233,748	111,846
City Funds	1,412,982	2,135,140
Other Public Funds	<u>170,351</u>	<u>273,751</u>
Sub-Total Public Funds	<u>3,046,276</u>	<u>3,633,532</u>
Cashier's Checks, etc.	269,254	219,582
Trust Funds	724,629	784,639
Due to Banks	178,953	139,398
Commercial Deposits	<u>9,388,243</u>	<u>8,378,386</u>
Total Commercial Deposits	<u>13,603,657</u>	<u>13,153,537</u>
Savings Deposits	26,479	23,930
Certificate Deposits	5,160,417	3,925,995
Savings Deposits	<u>10,892,351</u>	<u>9,683,904</u>
Total Savings Deposits	<u>16,079,248</u>	<u>13,633,830</u>
Total Deposits	<u>29,682,906</u>	<u>26,787,367</u>
Total Liabilities	<u>29,682,906</u>	<u>26,787,367</u>

FEDERAL RESERVE
STATEMENT OF CONDITION

SEATTLE BRANCH OFFICE

ASSETS

12-31-32

12-31-31

Cash on Hand
Clearing and Transit Items
Central Office Account
Total Cash and Surplus Funds

748,071	628,617
880,432	779,596
<u>1,628,503</u>	<u>1,408,213</u>
<u>1,628,503</u>	<u>1,408,213</u>

Loans - General
Loans - F. M. A. Mortgages
Loans - Other Mortgages
Loans - Installment

6,346,774	5,324,495
4,399,740	3,393,399
2,444,499	2,406,837
<u>13,191,013</u>	<u>11,124,731</u>

Total Loans

<u>13,191,013</u>	<u>11,124,731</u>
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Bank Buildings
Furniture and Equipment

222,271	228,453
<u>144,142</u>	<u>133,724</u>

Total Real Estate and Equipment

<u>366,413</u>	<u>362,177</u>
----------------	----------------

Overdrafts
Trust Advances
Accounts Receivable
Miscellaneous

888	1,487
14,846	11,473
77,512	26,979
<u>93,246</u>	<u>39,939</u>

Total Other

<u>93,246</u>	<u>39,939</u>
---------------	---------------

Total Resources

<u>31,371,475</u>	<u>22,923,063</u>
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LIABILITIES

Federal Funds
State Funds
City Funds
Other Public Funds

183,087	136,688
	192,154
771,546	1,255,613
<u>6,082</u>	<u>5,461</u>

Sub-Total Public Funds

<u>1,130,715</u>	<u>1,584,916</u>
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Cashier's Checks, etc.
Trust Funds
Due to Banks
Commercial Deposits

304,709	399,946
2,142,071	1,949,495
1,243,309	1,215,833
<u>33,788,977</u>	<u>21,565,310</u>

Total Commercial Deposits

<u>33,788,977</u>	<u>21,565,310</u>
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Club Deposits
Time Certificates
Savings Deposits

14,232	15,771
3,784,714	4,835,086
<u>3,138,422</u>	<u>4,850,857</u>

Total Savings Deposits

<u>3,138,422</u>	<u>4,850,857</u>
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Total Deposits

<u>31,371,475</u>	<u>22,923,063</u>
-------------------	-------------------

Total Liabilities

<u>31,371,475</u>	<u>22,923,063</u>
-------------------	-------------------

STATE OF NEW YORK

BALANCE SHEET

	12-31-52	12-31-51
Cash on Hand	1,000.00	1,000.00
Working and Traveling Funds	1,000.00	1,000.00
Central Office Accounts	1,000.00	1,000.00
Total Cash and Working Funds	3,000.00	3,000.00
General Fund	10,000.00	9,700.00
- F. H. A. Mortgage	2,000.00	2,100.00
- Other Mortgage	2,000.00	2,000.00
- Installment	1,000.00	1,000.00
Total Loans	5,000.00	5,100.00
Buildings	100,000.00	100,000.00
Furniture and Equipment	100,000.00	100,000.00
Total Real Estate and Equipment	200,000.00	200,000.00
Grants	1,000.00	1,000.00
Miscellaneous	1,000.00	1,000.00
Total Other	2,000.00	2,000.00
Total Resources	210,000.00	210,100.00

LIABILITIES

General Funds	100,000.00	100,000.00
State Funds	100,000.00	100,000.00
County Funds	100,000.00	100,000.00
City Funds	100,000.00	100,000.00
Other Public Funds	100,000.00	100,000.00
Sub-Total Public Funds	500,000.00	500,000.00
Bank's Checks, etc.	100,000.00	100,000.00
Deposits to Banks	100,000.00	100,000.00
Commercial Deposits	100,000.00	100,000.00
Total Commercial Deposits	300,000.00	300,000.00
Savings Deposits	100,000.00	100,000.00
Certificates	100,000.00	100,000.00
Other Deposits	100,000.00	100,000.00
Total Savings Deposits	300,000.00	300,000.00
Total Deposits	600,000.00	600,000.00
Total Liabilities	600,000.00	600,100.00

STATEMENT OF CONDITION

MARSHALL CITIZEN

RESOURCES

	<u>12-31-31</u>	<u>12-31-31</u>
Cash on Hand	175,283	128,437
Clearing and Transit Items	739	248
Central Office Account	6,282,171	6,282,811
Total Cash and Surplus Funds	<u>1,158,193</u>	<u>6,413,496</u>
Loans - General	1,347,877	999,796
- F. B. A. Mortgages	25,129	297,813
- Other Mortgages	1,254,871	1,304,896
- Installments	1,162,117	1,381,840
Total Loans	<u>1,387,123</u>	<u>1,684,549</u>
Bank Buildings, Estate and Equipment	31,493	33,193
Furniture and Equipment	21,221	21,321
Total Real Estate and Equipment	<u>52,714</u>	<u>54,514</u>
Overdrafts	73	125
Miscellaneous	1,261	2,322
Total Other	<u>1,334</u>	<u>2,447</u>
Total Resources	<u>12,973,511</u>	<u>12,172,179</u>

LIABILITIES

Federal Funds	9,125	10,434
State Funds	7,449	8,123
County Funds	297,000	131,000
City Funds	229,223	150,000
Other Public Funds	122,000	125,575
Sub-total Public Funds	<u>666,807</u>	<u>525,132</u>
Cashier's Checks, etc.	60,000	60,000
Commercial Deposits	1,252,223	1,730,978
Total Commercial Deposits	<u>1,312,223</u>	<u>1,790,978</u>
Club Deposits	22,746	20,317
Time Certificates	1,254,871	944,823
Savings Deposits	1,254,871	1,277,607
Total Savings Deposits	<u>2,509,742</u>	<u>2,222,440</u>
Total Deposits	<u>12,973,511</u>	<u>12,172,179</u>
Total Liabilities	<u>12,973,511</u>	<u>12,172,179</u>

STATEMENT OF CONDITION

	<u>12-31-72</u>	<u>12-31-71</u>
ASSETS		
Cash on Hand	88,897	846,988
Clearing and Transit Items	487,178	321,128
Central Office Account	<u>17,828,632</u>	<u>16,866,972</u>
Total Cash and Surplus Funds	<u>18,404,607</u>	<u>17,235,088</u>
Loans - General	3,819,489	3,345,023
- F. H. A. Mortgages	8,089,942	1,973,135
- Other Mortgages	7,182,321	6,988,099
- Installment	<u>1,972,888</u>	<u>4,089,762</u>
Total Loans	<u>11,982,378</u>	<u>13,295,961</u>
Real Buildings	221,475	947,802
Furniture and Equipment	<u>122,322</u>	<u>138,229</u>
Total Real Estate and Equipment	<u>1,343,807</u>	<u>1,086,031</u>
Overdrafts	15	32
Other Assets	1,304	761
Accounts Receivable	1,160	93
Miscellaneous	<u>48,775</u>	<u>112,190</u>
Total Other	<u>21,254</u>	<u>113,077</u>
Total Resources	<u>17,753,042</u>	<u>18,032,460</u>

LIABILITIES		
Federal Funds	31,482	109,712
State Funds	171,941	239,234
Other Public Funds	<u>82,732</u>	<u>182,046</u>
Sub-Total Public Funds	<u>286,155</u>	<u>530,992</u>
Cashier's Checks, etc.	876,394	311,134
Due to Banks	179,854	279,232
Commercial Deposits	<u>12,122,662</u>	<u>11,782,515</u>
Total Commercial Deposits	<u>12,122,662</u>	<u>12,372,881</u>
Club Deposits	29,921	29,921
Time Certificates	6,029,829	4,749,500
Savings Deposits	<u>13,217,122</u>	<u>12,421,923</u>
Total Savings Deposits	<u>13,247,043</u>	<u>12,451,344</u>
Total Deposits	<u>13,247,043</u>	<u>12,451,344</u>
Total Liabilities	<u>13,247,043</u>	<u>12,451,344</u>

*Michigan National Bank—1952 Borrower and Depositor
Activity Reports*

EXHIBIT 4-B

MICHIGAN NATIONAL BANK

CONSOLIDATED ACTIVITY REPORT

(All offices)

	12-31-52 Number
Borrowers—General Loans	4,328
—Mortgage Loans	11,582
—Installment Loans	81,719
Total Borrowers	97,629
Commercial Accounts	68,655
Savings Accounts	124,731
Certificate Depositors	6,137
Club Accounts	28,693
Total Depositors	228,216

MICHIGAN NATIONAL BANK

BATTLE CREEK OFFICE

Description	12-31-52 Number
Borrowers—General Loan	418
—Mortgage Loan	2,428
—Installment Loan	11,644
Total Borrowers	14,490
Commercial Accounts	13,291
Savings Book Accounts	24,570
Certificate Depositors	1,051
Club Accounts	9,722
Total Depositors	48,684

945a

Exhibit 4-B

Michigan National Bank—1952 Borrower and Depositor
Activity Reports

MICHIGAN NATIONAL BANK

FLINT OFFICE

Description	12-31-52 Number
Borrowers—General Loan	136
—Mortgage Loan	2,239
—Installment Loan	11,182
Total Borrowers	13,557
Commercial Accounts	8,696
Savings Book Accounts	17,369
Certificate Depositors	499
Club Accounts	2,771
Total Depositors	29,335

MICHIGAN NATIONAL BANK

GRAND RAPIDS OFFICE

Description	12-31-52 Number
Borrowers—General Loan	546
—Mortgage Loan	1,135
—Installment Loan	22,156
Total Borrowers	23,837
Commercial Accounts	8,360
Savings Book Accounts	11,441
Certificate Depositors	1,149
Club Accounts	1,685
Total Depositors	22,635

Exhibit 4-B

946a

**Michigan National Bank—1952 Borrower and Depositor
Activity Reports****MICHIGAN NATIONAL BANK****LANSING OFFICE**

Description	12-31-52 Number
Borrowers—General Loan	1,053
—Mortgage Loan	1,382
—Installment Loan	12,824
Total Borrowers	15,259
Commercial Accounts	15,869
Savings Book Accounts	19,754
Certificate Depositors	1,344
Club Accounts	4,905
Total Depositors	41,872

MICHIGAN NATIONAL BANK**MARSHALL OFFICE**

Description	12-31-52 Number
Borrowers—General Loan	483
—Mortgage Loan	277
—Installment Loan	3,423
Total Borrowers	4,183
Commercial Accounts	3,032
Savings Book Accounts	5,387
Certificate Depositors	214
Club Accounts	1,332
Total Depositors	9,965

947a

Exhibit 4-B

Michigan National Bank—1952 Borrower and Depositor
Activity Reports

MICHIGAN NATIONAL BANK

PORT HURON OFFICE

Description	12-31-52 Number
Borrowers—General Loan	1,260
—Mortgage Loan	2,295
—Installment Loan	11,109
Total Borrowers	14,664
Commercial Accounts	8,704
Savings Book Accounts	19,717
Certificate Depositors	863
Club Accounts	5,530
Total Depositors	34,814

MICHIGAN NATIONAL BANK

SAGINAW OFFICE

Description	12-31-52 Number
Borrowers—General Loan	432
—Mortgage Loan	1,826
—Installment Loan	9,381
Total Borrowers	11,639
Commercial Accounts	10,703
Savings Book Accounts	26,493
Certificate Depositors	1,017
Club Accounts	2,698
Total Depositors	40,911

Michigan National Bank

CONSOLIDATED
(Call Office)
LOANS MADE AND PAID

*Notes Ex 4-
7/2/58
JFE*

Description	Balance Start of Period	New Loans	Principal Payments	Balance Close of Period
<u>December 1952</u>				
General Loans	27,649,009	7,333,001	6,307,416	28,674,594
FHA Mortgages	26,399,326	1,016,933	631,482	26,944,797
G.I. Mortgages	10,382,301	47,487	117,265	10,512,523
Other Mortgages	24,346,538	901,884	948,434	24,339,608
Installment Loans	<u>60,665,960</u>	<u>6,772,853</u>	<u>2,442,862</u>	<u>57,898,551</u>
Total	<u>149,843,734</u>	<u>16,071,178</u>	<u>17,634,832</u>	<u>148,280,073</u>
<u>Year to Date 1952</u>				
General Loans	26,845,099	78,484,926	76,635,431	28,674,594
FHA Mortgages	21,069,583	10,913,409	5,036,195	26,944,797
G.I. Mortgages	11,652,907	342,385	1,682,669	10,512,523
Other Mortgages	21,721,586	12,213,871	9,995,849	24,339,608
Installment Loans	<u>52,622,966</u>	<u>83,837,134</u>	<u>78,631,611</u>	<u>57,898,551</u>
Total	<u>133,922,141</u>	<u>185,751,687</u>	<u>171,623,755</u>	<u>148,280,073</u>

N° 8° 8°
BATTLE CREEK OFFICE
LOANS MADE AND PAID

<u>Description</u>	<u>Balance Start of Period</u>	<u>New Loans</u>	<u>Principal Payments</u>	<u>Balance Close of Period</u>
<u>December 1952</u>				
General Loans	3,410,343	372,285	495,697	3,286,931
FHA Mortgages	4,366,346	115,687	37,562	4,644,691
G.I. Mortgages	3,034,099	111	26,489	3,007,721
Other Mortgages	2,794,083	162,187	109,368	2,806,831
Installment Loans	<u>5,183,348</u>	<u>542,307</u>	<u>510,180</u>	<u>5,215,472</u>
Total	<u>18,988,399</u>	<u>1,192,579</u>	<u>1,179,496</u>	<u>18,991,472</u>

<u>Year to Date 1953</u>				
General Loans	2,423,157	4,785,249	3,921,455	3,286,951
FHA Mortgages	3,479,678	1,384,930	419,917	4,644,691
G.I. Mortgages	3,392,581	25,896	410,956	3,007,521
Other Mortgages	2,693,444	1,452,643	1,339,256	2,806,831
Installment Loans	<u>4,477,401</u>	<u>7,657,004</u>	<u>6,918,930</u>	<u>5,215,472</u>
Total	<u>16,466,261</u>	<u>15,305,722</u>	<u>13,000,516</u>	<u>18,991,472</u>

N. W. 8
PLANT OFFICE

LOANS MADE AND PAID

<u>Description</u>	<u>Balance Start of Period</u>	<u>New Loans</u>	<u>Principal Payments</u>	<u>Balance Close of Period</u>
<u>December 1952</u>				
General Loans	861,728	479,710	444,863	874,575
FHA Mortgages	6,430,181	176,000	44,372	6,561,609
G.I. Mortgages	2,441,180	10,176	29,836	2,421,520
Other Mortgages	3,039,444	231,398	303,532	3,067,520
Installment Loans	<u>1,516,186</u>	<u>667,641</u>	<u>572,332</u>	<u>1,611,495</u>
Total	<u>18,320,722</u>	<u>1,566,926</u>	<u>1,392,933</u>	<u>18,547,721</u>

Year to Date 1952

General Loans	1,176,276	3,422,992	5,726,693	874,575
FHA Mortgages	3,543,339	1,543,873	325,603	6,561,609
G.I. Mortgages	2,708,835	110,454	399,769	2,421,520
Other Mortgages	2,836,480	1,329,446	1,048,407	3,067,520
Installment Loans	<u>1,312,361</u>	<u>8,767,182</u>	<u>7,437,436</u>	<u>1,611,495</u>
Total	<u>16,786,871</u>	<u>17,173,946</u>	<u>15,938,130</u>	<u>18,547,721</u>

M. N. C.
GRAND RAPIDS OFFICE
LOANS MADE AND PAID

Description	Balance Start of Period	New Loans	Principal Payments	Balance Close of Period
December 1952				
General Loans	6,117,160	1,733,374	1,448,824	6,381,650
FHA Mortgages	4,599,511	380,946	420,328	4,559,749
G.I. Mortgages	956,824	6,900	2,822	962,502
Other Mortgages	2,336,732	34,449	109,085	2,282,396
Installment Loans	22,202,428	2,161,814	6,325,282	27,877,366
Total	41,822,305	5,316,725	8,526,447	43,646,213

* This includes Trailer Notes sold to National City
 New York, 2,215,733 - First National, Philadelphia
 1,087,417 and Chase National 878,444.

Year to Date 1952				
General Loans	5,354,138	21,210,349	20,183,097	6,381,650
FHA Mortgages	3,353,399	3,850,285	2,723,925	4,559,749
G.I. Mortgages	717,982	34,281	209,720	962,502
Other Mortgages	1,932,376	1,440,089	1,380,085	2,282,396
Installment Loans	22,825,211	40,875,028	40,826,128	27,877,366
Total	41,269,105	67,410,314	61,311,035	43,646,213

P. N. B.
LOANING OFFICE
LOAN BALANCE SHEET

Description	Balance Start of Period	New Loans	Principal Payments	Balance Close of Period
December 1952				
General Loans	10,237,871	2,021,873	2,244,773	10,015,673
FHA Mortgages	5,024,197	220,900	34,742	5,991,895
G.I. Mortgages	947,730		28,700	919,007
Other Mortgages	4,222,972	133,908	133,343	4,192,737
Installment Loans	4,242,432	571,921	221,024	4,831,385
Total	24,214,302	2,826,602	2,628,837	25,920,697

Year to Date 1953				
General Loans	9,702,409	26,787,043	26,473,799	10,015,673
FHA Mortgages	4,314,322	2,133,642	436,009	5,991,895
G.I. Mortgages	1,044,430	20,430	146,076	919,007
Other Mortgages	3,279,396	2,391,827	1,478,176	4,192,737
Installment Loans	4,177,242	7,134,027	4,320,352	4,831,385
Total	22,537,800	36,467,472	32,824,432	25,920,697

W-3
NATIONAL OFFICE
LOAN DATA AND PAID

Description	Balance Start of Period	New Loans	Principal Payments	Balance Close of Period
<u>December 1952</u>				
General Loans	1,399,793	350,038	272,933	1,397,898
FHA Mortgages	489,221	31,900	15,532	485,189
G.I. Mortgages	152,938		1,311	151,647
Other Mortgages	1,102,737	7,430	12,943	1,096,624
Installment Loans	1,489,312	238,714	221,908	1,722,118
Total	<u>4,533,002</u>	<u>627,712</u>	<u>522,524</u>	<u>4,853,476</u>

Year to date 1952

General Loans	999,922	2,631,142	2,233,166	1,397,898
FHA Mortgages	297,813	236,148	48,772	485,189
G.I. Mortgages	211,854	11,900	74,707	151,647
Other Mortgages	1,099,989	217,454	220,813	1,096,624
Installment Loans	<u>1,288,241</u>	<u>2,583,320</u>	<u>2,142,643</u>	<u>1,722,118</u>
Total	<u>3,877,819</u>	<u>5,469,964</u>	<u>4,719,301</u>	<u>4,853,476</u>

M-N-B
FIRST MORTGAGE OFFICE
LOANS MADE AND PAID

Description	Balance Start of Period	New Loans	Principal Payments	Balance Close of Period
December 1932	3,481,120	1,051,400	312,070	3,444,517
General Loans	3,251,946	1,341,530	1,070,441	3,522,634
FHA Mortgages	2,729,099	24,200	97,130	2,696,120
G.I. Mortgages	1,808,848	30,700	14,821	1,824,937
Other Mortgages	5,388,432	126,470	128,966	5,386,334
Installment Loans	4,625,382	777,032	615,354	4,814,470
Total	18,071,114	2,300,132	1,826,732	18,444,517
Year to Date 1932	3,341,000	9,137,070	3,079,559	3,344,210
General Loans	3,078,413	10,494,140	10,219,079	3,322,634
FHA Mortgages	2,507,934	803,343	615,397	2,696,120
G.I. Mortgages	1,777,195	225,230	177,500	1,824,937
Other Mortgages	5,078,273	2,284,470	1,900,449	5,386,334
Installment Loans	4,173,191	8,269,270	7,407,935	4,814,470
Total	17,402,922	21,886,423	20,221,170	18,444,517

M-N-B
SAGINAW OFFICE
LOANS MADE AND PAID

Description	Balance Start of Period	New Loans	Principal Payments	Balance Close of Period
<u>December 1952</u>				
General Loans	2,480,110	1,092,486	312,092	3,219,505
FHA Mortgages	1,958,629	66,500	19,586	2,005,543
G.I. Mortgages	1,638,682		13,293	1,625,389
Other Mortgages	5,535,345	204,022	232,225	5,507,162
Installment Loans	<u>5,466,922</u>	<u>790,320</u>	<u>686,254</u>	<u>5,572,689</u>
Total	<u>17,079,379</u>	<u>2,112,328</u>	<u>1,261,449</u>	<u>17,930,288</u>

Year to Date 1952

General Loans	3,345,024	9,153,770	9,279,389	3,219,505
FHA Mortgages	1,573,136	681,007	248,600	2,005,543
G.I. Mortgages	1,706,827	94,496	255,934	1,625,389
Other Mortgages	4,802,232	2,931,990	2,226,020	5,507,162
Installment Loans	<u>4,092,762</u>	<u>8,160,622</u>	<u>6,677,764</u>	<u>5,572,689</u>
Total	<u>15,595,961</u>	<u>21,021,914</u>	<u>18,687,567</u>	<u>17,930,288</u>

Exhibit 4-E

956a

Michigan National Bank—1952 F.H.A. Installment Loans

EXHIBIT 4-E

MICHIGAN NATIONAL BANK
 CONSOLIDATED
 (All offices)

	No.	December 31, 1952 Amount	%
FHA	24,447	8,317,457	14
Total	81,719	57,808,551	100

MICHIGAN NATIONAL BANK
 BATTLE CREEK OFFICE
 INSTALLMENT-LOAN DEPARTMENT

	No.	December 31, 1952 Amount
FHA	4178	1,475,708
Total	11644	5,215,477

MICHIGAN NATIONAL BANK
 FLINT OFFICE
 INSTALLMENT LOAN DEPARTMENT

	No.	December 31, 1952 Amount
FHA	4032	1,202,313
Total	11182	5,622,496

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Exhibit 4-E

Michigan National Bank—1952 F.H.A. Installment Loans

MICHIGAN NATIONAL BANK
GRAND RAPIDS OFFICE
INSTALLMENT LOAN DEPARTMENT

		December 31, 1952	
		No.	Amount
FHA	.....	3,222	1,106,488
Total	.....	22,156	29,859,915

MICHIGAN NATIONAL BANK
LANSING OFFICE
INSTALLMENT LOAN DEPARTMENT

		December 31, 1952	
		No.	Amount
FHA	.....	6627	2,187,974
Total	.....	12824	4,801,385

MICHIGAN NATIONAL BANK
MARSHALL OFFICE
INSTALLMENT LOAN DEPARTMENT

		December 31, 1952	
		No.	Amount
FHA	.....	498	206,212
Total	.....	3423	1,722,118

Michigan National Bank—1952 F.H.A. Installment Loans

MICHIGAN NATIONAL BANK

PORT HURON OFFICE

INSTALLMENT LOAN DEPARTMENT

		December 31, 1952	
		No.	Amount
FHA	.....	2625	849,394
Total	.....	11109	5,014,470

MICHIGAN NATIONAL BANK

SAGINAW OFFICE

INSTALLMENT LOAN DEPARTMENT

		December 31, 1952	
		No.	Amount
FHA	.....	3265	1,289,367
Total	.....	9381	5,572,689

Exhibit 5-H
Michigan National Bank—Summary of 1952 Real Estate Loans
Estate Loans

959a

7-14-55
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REAL ESTATE MORTGAGE LOANS MADE IN 1952

Residential				Commercial			
No.	Amount	Average		No.	Amount	Average	Total
B. C.	487	2,800,436	5,750	25	330,199	13,208	3,130,657
Flint	335	2,240,756	6,689	12	471,000	39,250	2,711,756
Grand Rapids	603	4,816,515	7,988	17	674,456	39,674	5,490,971
Lansing	349	2,844,638	8,120	20	1,527,200	76,360	4,471,838
Marshall	82	462,823	5,649	3	30,000	10,000	492,825
Port Huron	480	2,726,090	5,679	27	543,384	20,125	3,269,474
Saginaw	412	2,552,756	6,222	33	1,052,300	31,888	3,611,656
Total	2,728	18,550,638	6,802	137	4,628,539	31,785	23,179,177

FHA REAL ESTATE MORTGAGE LOANS MADE IN 1952

	No.	Amount	Average
Battle Creek	203	1,631,350	8,036
Flint	176	1,501,550	8,531
Grand Rapids	446	3,869,050	8,675
Lansing	244	2,154,473	8,830
Marshall	30	224,718	7,490
Port Huron	98	786,900	8,030
Saginaw	26	701,150	7,304
Total	1,223	10,862,191	8,906

GI REAL ESTATE MORTGAGE LOANS MADE IN 1952

	No.	Amount	Average
Battle Creek	3	19,970	6,657
Flint	9	73,090	8,117
Grand Rapids	2	14,500	7,250
Lansing	2	20,450	10,225
Marshall	1	11,500	11,500
Port Huron	24	225,250	9,385
Saginaw	10	91,800	9,180
Total	31	456,560	8,951

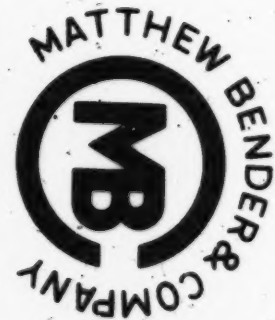
REGULAR REAL ESTATE MORTGAGE LOANS MADE IN 1952

Residential				Commercial			
No.	Amount	Average		No.	Amount	Average	Total
Battle Creek	281	1,149,606	4,091	25	330,199	13,208	1,479,805
Flint	190	666,156	3,491	12	471,000	39,250	1,137,156
Grand Rapids	155	932,265	6,015	17	674,456	39,674	1,606,721
Lansing	83	769,715	9,274	20	1,527,200	76,360	2,296,915
Marshall	51	226,607	4,443	3	30,000	10,000	256,607
Port Huron	354	1,713,940	4,841	27	543,384	20,125	2,257,324
Saginaw	308	1,766,406	5,732	33	1,052,300	31,888	2,818,706
Total	1,330	7,224,629	5,430	137	4,628,539	31,785	11,853,234

MICROCARD

TRADE MARK 

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*Michigan Savings and Loan Associations—Statement of
Condition as of 12/31/52*

EXHIBIT 6*

Table No. 9—MEMBER SAVINGS AND LOAN ASSOCIATIONS

Assets and Liabilities—By States and Class of Association

December 31, 1952—Continued

(Amounts in thousands of dollars)

Michigan

State-Chartered

Items	Total Members	Federal	Insured	Uninsured
Number of associations . . .	63	36	19	8
ASSETS				
First mortgage loans . . .	420,871	298,711	95,769	26,391
Other loans	3,319	2,601	481	237
Real estate sold on con- tract	11,756	5,568	3,984	2,204
Real estate owned	558	221	332	5
FHLB stock	9,338	6,584	2,173	581
U. S. Government obli- gations	38,841	25,599	11,294	1,948
Other investments	144	6	134	4
Cash on hand and in banks	43,433	33,240	8,667	1,526
Office building (net) . . .	4,997	3,385	1,074	538
Furniture and fixtures (net)	815	613	162	40
Other assets	242	125	110	7
Total Assets	<u>534,314</u>	<u>376,653</u>	<u>124,180</u>	<u>33,481</u>
LIABILITIES AND CAPITAL				
Savings capital	465,468	333,863	104,464	27,141
Mortgage pledged shares	—	—	—	—
Advances from FHLB . . .	18,008	10,500	6,787	721
Other borrowed money . .	20	—	—	20
Loans in process	7,351	4,309	2,715	327
Other liabilities	3,317	2,870	587	360
Permanent stock	—	—	—	—
Deferred credits	487	342	83	62
Specific reserves	248	124	75	49
General reserves	26,587	16,574	6,734	3,279
Undivided profits	12,828	8,571	2,735	1,522
Total Liabilities and Capital	<u>534,314</u>	<u>376,653</u>	<u>124,180</u>	<u>33,481</u>

*Extracted from Combined Financial Statements of Members of
the Home Loan Bank System, 1952, Home Loan Bank, Board, p. 28.

961a

Exhibit 6-A

1956 Mortgage Recordings by Type of Lender

EXHIBIT 6-A*

NONFARM MORTGAGE RECORDINGS OF \$20,000 OR LESS

By Type of Mortgagee, FHLB District and Selected States

TABLE 26.

(\$000 Omitted)

FHLB
District and
Selected
States
1956

	Total	Savings Assns.	Insurance Companies	Commercial Banks	Mutual Savings Banks	Individuals	Miscellaneous
United States	\$27,087,987	\$9,532,411	\$1,798,540	\$5,458,487	\$1,823,716	\$3,557,507	\$4,917,339
Michigan	1,090,332	219,592	98,595	323,910	—	78,418	339,327

*Extracted from Savings and Home Financing Source Book, 1957; Federal Home Loan Board, p. 39.

*Michigan Savings and Loan Associations—Statement of
Condition as of 12/31/56*

EXHIBIT 6-B*

Table No. 10—MEMBER SAVINGS AND LOAN ASSOCIATIONS

Assets and Liabilities—By States and Class of Association
December 31, 1956—Continued

(Amounts in thousands of dollars)

Items	Total Members	Michigan		
		Insured—FSLIC		Uninsured
		Federal	State- Chartered	State- Chartered
Number of associations....	67	35	26	6
ASSETS				
First mortgage loans.....	839,830	572,098	224,077	43,655
Other loans	11,502	8,630	2,397	475
Real estate sold on contract.	18,502	7,381	8,595	2,526
Real estate owned.....	739	284	400	55
FHLB stock	17,632	12,141	4,583	908
U. S. Government obligations	71,289	52,488	16,399	2,402
Other investments	6,336	5,321	960	55
Cash on hand and in banks	72,109	48,530	20,236	3,343
Office building (net).....	11,847	7,820	3,423	604
Furniture and fixtures (net)	2,147	1,458	629	60
Other assets	510	290	204	16
Total Assets	1,052,443	716,441	281,903	54,099
LIABILITIES & CAPITAL				
Savings capital	925,052	636,942	241,757	46,353
Mortgage pledged shares...	—	—	—	—
Advances from FHLB.....	24,830	11,463	12,772	595
Other borrowed money.....	1,084	350	734	—
Loans in process.....	14,653	8,248	5,626	779
Other liabilities	9,842	7,329	1,882	631
Permanent stock	—	—	—	—
Deferred credits	2,565	1,808	594	163
Specific reserves	338	111	189	38
General reserves	61,076	41,838	15,357	3,881
Undivided profits	13,003	8,352	2,992	1,659
Total Liab. & Capital..	1,052,443	716,441	281,903	54,099

*Extracted from Federal Home Loan Bank System Members' Combined Financial Statements, 1956, Federal Home Loan Bank Board, p. 28.

EXHIBIT 7*

INVESTMENTS OF INDIVIDUALS IN UNITED STATES IN
SAVINGS ACCOUNTS

TABLE 7.

(\$000,000 Omitted)

Period YEAR-END	Savings Accounts	
	Savings Assna.	Commercial Banks
1920	\$ 1,741	\$10,546
1925	3,811	16,314
1930	6,296	18,647
1931	5,916	15,955
1932	5,326	12,101
1933	4,750	10,979
1934	4,458	11,992
1935	4,254	12,899
1936	4,194	13,709
1937	4,080	14,410
1938	4,077	14,427
1939	4,118	14,865
1940	4,322	15,403
1941	4,682	15,523
1942	4,941	16,056
1943	5,494	19,001
1944	6,305	23,871
1945	7,365	29,929
1946	8,548	33,447
1947	9,753	34,694
1948	10,964	34,970
1949	12,471	35,145

Exhibit 7

964a

Investment of Individuals in United States In
Savings Accounts

(\$'000,000 Omitted)

Period	Savings Assns.	Commercial Banks
MID-YEAR OR YEAR-END		
1950—June	13,422	35,624
Dec.	13,922	35,200
1951—June	14,910	35,520
Dec.	16,107	36,592
1952—June	17,656	37,955
Dec.	19,195	39,331
1953—June	21,140	40,800
Dec.	22,846	42,001
1954—June	25,170	43,633
Dec.	27,334	44,746
1955—June	29,920	45,713
Dec.	32,192	46,331
1956p—June	34,948	47,522
Dec.	37,302	48,600

p—Preliminary.

*Extracted from Savings and Home Financing Source Book,
1957, Federal Home Loan Bank Board, p. 15.

965a

Exhibit 10

United States Mortgage Debt by Type of Lender

EXHIBIT 10*

MORTGAGE DEBT

1-4 Family Nonfarm Homes by Type of Lender

TABLE 13.

(\$000,000 Omitted).

December 31	Total	Savings Assns.	Commercial Banks
1925	\$12,984	\$ 3,994	\$ 1,376
1930	18,891	6,082	2,199
1933	15,352	4,215	1,707
1934	15,630	3,525	1,450
1935	15,437	3,127	1,541
1936	15,385	3,122	1,634
1937	15,518	3,291	1,786
1938	15,775	3,433	1,910
1939	16,342	3,616	2,096
1940	17,391	3,919	2,363
1941	18,351	4,349	2,672
1942	18,212	4,349	2,752
1943	17,811	4,355	2,706
1944	17,924	4,617	2,703
1945	18,591	5,156	2,875
1946	23,034	6,840	4,576
1947	28,199	8,475	6,303
1948	33,279	9,841	7,396
1949	37,619	11,117	7,956
1950	45,170	13,116	9,481
1951	51,711	14,844	10,275
1952	58,500	17,645	11,250
1953	66,094	20,999	12,025
1954	75,677	25,004	13,300
1955	88,250	30,001	15,075
1956(p)	99,163	34,164	16,255

Exhibit 10 (continued) 966a
United States Mortgage Debt by Type of Lender

PERCENTAGE DISTRIBUTION

(\$000,000 Omitted)

December 31	Total	Savings Assns.	Commercial Banks
1930	100.0	32.2	11.6
1935	100.0	20.3	10.0
1940	100.0	22.5	13.6
1945	100.0	27.7	15.5
1949	100.0	29.6	21.2
1950	100.0	29.0	21.0
1951	100.0	28.7	19.9
1952	100.0	30.2	19.2
1953	100.0	31.8	18.2
1954	100.0	33.0	17.6
1955	100.0	34.0	17.1
1956(p)	100.0	34.4	16.4

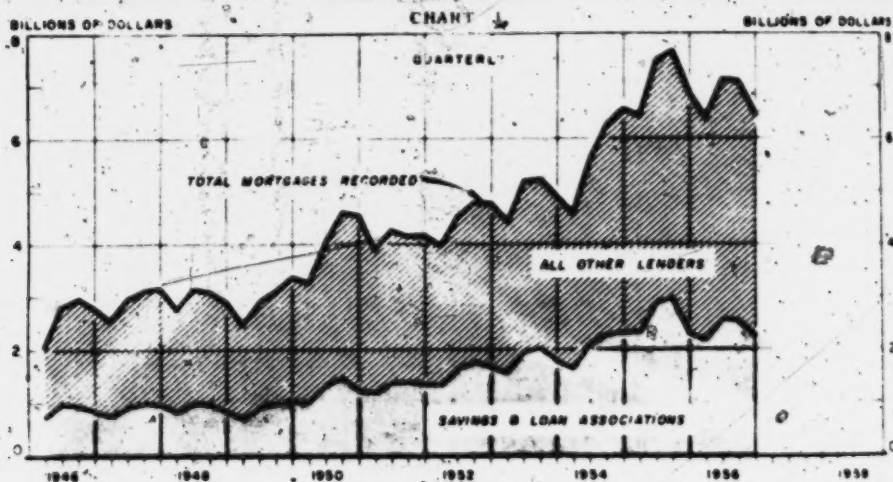
(p)—Preliminary.

*Extracted from Savings and Home Financing Source Book, .
 1957, Federal Home Loan Bank Board, p. 23.

United States Mortgage Recordings by Type of Lender

EXHIBITS 11* and 12*

NONFARM MORTGAGE RECORDINGS OF \$20,000 OR LESS



By Type of Mortgagee

TABLE 24.

Period	Total	Savings Assns.	Commercial Banks
ANNUAL DATA			
1940	\$ 4,031,368	\$ 1,283,628	\$1,005,893
1945	5,649,819	2,017,066	1,097,039
1950	16,179,196	5,059,612	3,364,889
1952	18,017,677	6,452,357	3,599,856
1953	19,747,408	7,365,276	3,679,676
1954	22,973,853	8,311,993	4,239,266
1955	28,484,179	10,451,684	5,616,558
1956	27,087,987	9,532,411	5,458,487

*Extracted from Savings and Home Financing Source Book, 1957, Federal Home Loan Bank Board, p.36.

United States Mortgage Recordings by Type of Lender

PERCENTAGE DISTRIBUTION

Period	Total	Savings Assns.	Commercial Banks
ANNUAL DATA			
1940	100.0	31.8	25.0
1945	100.0	35.7	19.4
1950	100.0	31.3	20.8
1952	100.0	35.8	20.0
1953	100.0	37.3	18.6
1954	100.0	36.2	18.5
1955	100.0	36.7	19.7
1956	100.0	35.2	20.2

969a

Exhibit 13(1)

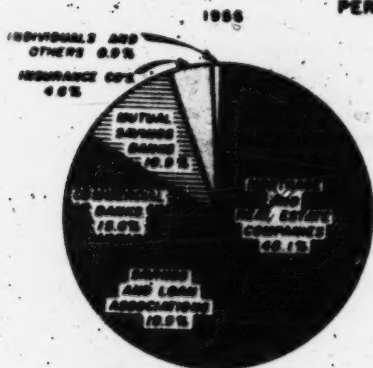
United States V. A. Mortgages by Type of Lender

EXHIBIT 13(1)*

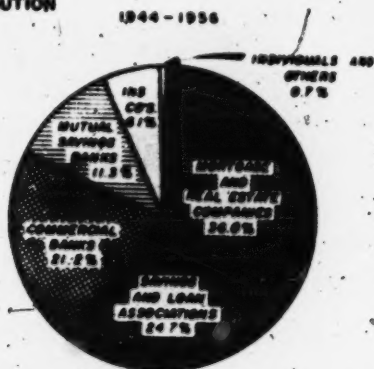
VA HOME LOANS CLOSED

CHART I.

PERCENT DISTRIBUTION



\$ 3,868,000,000



\$ 38,821,000,000

Number and Amount by Type of Lender

TABLE 23.

Period	Total	Savings Assns.	Commercial Banks
NUMBER			
Cumulative Data			
1944-1956	4,598,900	1,184,200	1,114,300
Annual Data			
1951	447,300	89,400	104,100
1952	306,800	81,400	66,800
1953	322,100	92,500	54,800
1954	410,800	92,000	51,900
1955	649,600	154,800	93,500
1956	507,700	107,300	81,200

*United States V. A. Mortgage Loans by Type of Lender***PRINCIPAL
AMOUNT**

(In thousands)

Period	Total	Savings Assns.	Commercial Banks
Cumulative Data			
1944-1956	\$38,821,000	\$9,597,000	\$8,218,000
Annual Data			
1951	3,614,000	704,000	764,000
1952	2,721,000	694,000	570,000
1953	3,061,000	853,000	497,000
1954	4,257,000	883,000	510,000
1955	7,157,000	1,591,000	993,000
1956	5,868,000	1,166,000	915,000

*Extracted from Savings and Home Financing Source Book,
1957, Federal Home Loan Bank Board, p. 35.

EXHIBIT 13(2)*

Table—FHA HOME MORTGAGES ORIGINATED AND HELD IN THE UNITED STATES, BY TYPE OF INSTITUTION, 1952

(Dollar amounts in thousands)

Type of institution	Number of institutions		Mortgages originated ¹ in 1952			Mortgages held in 1952		
	Originat- ing	Holding	Number	Amount	Percent- age dis- tribution Total	Number	Amount	Percent- age dis- tribution
All Sections								
National bank			49,938	\$418,178	21.9	320,279	\$2,108,695	17.9
Savings & loan association			21,148	169,842	8.9	139,171	922,347	7.8
Total			231,422	1,914,067	100.0	1,740,980	11,783,955	100.0
Section 8								
National bank	40	63	687	3,351	11.0	1,036	4,920	8.9
Savings & loan association	65	82	880	4,457	14.6	1,377	6,614	11.9
Total	275	399	5,922	30,587	100.0	11,367	55,501	100.0
Section 203								
National bank	1,069	2,722	47,681	401,550	22.6	268,281	1,776,264	19.0
Savings & loan association	713	1,610	19,895	162,321	9.1	114,844	770,496	8.2
Total	3,993	9,422	212,975	1,774,925	100.0	1,373,395	9,366,933	100.0
Section 603								
National bank	1	887	5	40	13.7	50,318	321,962	14.0
Savings & loan association	—	652	—	—	—	22,775	143,923	6.3
Total	6	3,337	45	291	100.0	347,959	2,290,294	100.0
Section 903								
National bank	18	14	1,565	13,238	12.2	644	5,549	7.8
Savings & loan association	11	6	373	3,063	2.8	175	1,314	1.8
Total	147	108	12,480	108,264	100.0	8,259	71,228	100.0

¹Less than 0.05 percent.

* Extracted from Federal Housing Agency Reports to Congress.

Exhibit 13(2)

971a

EXHIBIT 14*

Table 1—TREND OF SELECTED FINANCIAL ITEMS FOR ALL
OPERATING SAVINGS AND LOAN ASSOCIATIONS
IN UNITED STATES

1922-1956

(Amounts in millions of dollars)

First Mortgage Loans

Year ending Dec. 31	Number of assns.	Total assets	Gross loans	Mortgage pledged shares	Net loans
1922	10,009	\$ 3,343	\$ 3,009	\$ 541	\$ 2,468
1923	10,744	3,943	3,549	632	2,917
1924	11,844	4,766	4,289	770	3,519
1925	12,403	5,509	5,085	881	4,204
1926	12,626	6,334	5,842	1,032	4,810
1927	12,804	7,179	6,586	1,098	5,488
1928	12,666	8,016	7,267	1,207	6,060
1929	12,342	8,695	7,791	1,284	6,507
1930	11,777	8,829	7,760	1,358	6,402
1931	11,442	8,417	7,214	1,324	5,890
1932	10,915	7,737	6,407	1,259	5,148
1933	10,596	7,018	5,559	1,122	4,437
1934	10,744	6,406	4,593	883	3,710
1935	10,266	5,875	3,947	655	3,292
1936	10,042	5,772	3,810	524	3,286
1937	9,225	5,682	3,886	422	3,464
1938	8,762	5,632	3,967	353	3,614
1939	8,006	5,597	4,126	320	3,806
1940	7,521	5,733	4,415	290	4,125
1941	7,211	6,049	4,823	245	4,578
1942	6,941	6,150	4,810	227	4,583
1943	6,498	6,604	4,793	209	4,584
1944	6,279	7,458	4,983	183	4,800
1945	6,149	8,747	5,521	145	5,376
1946	6,093	10,202	7,276	135	7,141
1947	6,045	11,687	8,971	115	8,856
1948	6,011	13,028	10,409	104	10,305
1949	5,983	14,622	11,714	98	11,616
1950	5,992	16,846	13,714	92	13,622
1951	5,995	19,164	15,610	90	15,520
1952	6,004	22,585	18,416	80	18,336
1953	6,012	26,638	21,957	75	21,882
1954	6,038	31,612	26,172	70	26,102
1955	6,071	37,596	31,408	58	31,350
1956	6,136	42,781	35,719	46	35,673

*Extracted from Report of Federal Home Loan Bank Board,
October, 1957, p. 1.

EXHIBIT 15*

MORTGAGE LOANS MADE
All Savings Associations in United States
By Purpose and Class of Association

TABLE 17.

(\$000,000 Omitted)

Savings and Loan Period	All Savings and Loan Associations				VA Loans (Included in Total)
	Con- struction	Home Purchase	Other	Total Loans	
Annual Data					
1940	\$ 399	\$ 426	\$ 375	\$ 1,200	—
1941	437	581	361	1,379	—
1942	191	574	286	1,051	—
1943	107	802	275	1,184	—
1944	95	1,064	295	1,454	—
1945	180	1,358	375	1,913	—
1946	615	2,357	612	3,584	—
1947	894	2,128	789	3,811	—
1948	1,046	1,710	851	3,607	—
1949	1,083	1,559	994	3,636	\$ 407
1950	1,767	2,246	1,224	5,237	874
1951	1,657	2,357	1,236	5,250	604
1952	2,105	2,955	1,557	6,617	678
1953	2,475	3,488	1,804	7,767	832
1954	3,076	3,846	2,047	8,969	1,030
1955	4,041	5,241	2,150	11,432	1,668
1956	3,772	4,727	2,046	10,545	1,161

*Extracted from Savings and Home Financing Source Book,
 1957, Federal Home Loan Bank Board, p. 28.

Exhibit 18

974a

*F.H.A., V.A., and Conventional Mortgage Loans Made
and Held by all Savings and Loan Associations in
United States*

EXHIBIT 18*

MORTGAGE ACTIVITY OF SAVINGS AND LOAN
ASSOCIATIONS

(In millions of dollars)

Loans made

Loans outstanding (end of period)

Year or month	Total	Total	FHA- insured	VA-guar- anteed	Con- ventional
1941	1,379	4,578	.....	.....	.....
1945	1,913	5,376	.....	.....	.....
1950	5,237	13,657	848	2,973	9,836
1951	5,250	15,564	866	3,133	11,565
1952	6,617	18,396	904	3,394	14,098
1953	7,767	21,962	1,048	3,979	16,935
1954	8,969	26,194	1,172	4,721	20,301
1955	11,432	31,461	1,405	5,891	24,165
1956	10,545	35,729	1,486	6,643	27,600
1957	10,402	40,119	1,643	7,013	31,463

1957

Feb.	709	36,195	1,493	6,682	28,020
Mar.	842	36,559	1,499	6,724	28,336
Apr.	899	36,963	1,508	6,774	28,681
May	968	37,421	1,520	6,833	29,068
June	925	37,886	1,530	6,889	29,467
July	969	38,280	1,545	6,904	29,831
Aug.	1,001	38,743	1,560	6,920	30,263
Sept.	891	39,106	1,573	6,933	30,600
Oct.	980	39,532	1,591	6,946	30,995
Nov.	768	39,835	1,597	6,963	31,275
Dec.	734	40,119	1,643	7,013	31,463

1958

Jan.	823	40,369	1,651	7,048	31,670
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*Extracted from Federal Reserve Bulletin, April, 1958, p. 470.

*F.H.A., V.A., and Conventional Mortgages Held by All
Commercial Banks in United States*

EXHIBIT 19*

MORTGAGE LOANS HELD BY BANKS¹

(In millions of dollars)

Commercial bank holdings²

End of year or quarter	Total	Residential		
		FHA- insured	VA-guar- anteed	Con- ventional
1941	3,292	.....	.....	.....
1945	3,395	.....	.....	.....
1950	10,431	.....	.....	.....
1951	11,270	3,421	2,921	4,929
1952	12,188	3,675	3,012	5,501
1953	12,925	3,912	3,061	5,951
1954	14,152	4,106	3,350	6,695
1955	15,888	4,560	3,711	7,617
1956	17,004	4,803	3,902	8,300
1957 ^p	17,155	4,840	3,590	8,725
1956—June	16,500	4,668	3,837	7,995
Sept.	16,860	4,760	3,890	8,210
Dec.	17,004	4,803	3,902	8,300
1957—Mar.	16,880	4,770	3,810	8,300
June	16,890	4,730	3,720	8,440
Sept. ^p	17,070	4,760	3,660	8,650
Dec. ^p	17,155	4,840	3,590	8,725

^p Preliminary.¹ Represents all banks in the United States and possessions.² Includes loans held by nondeposit trust companies but excludes holdings of trust departments of commercial banks.

*Extracted from Federal Reserve Bulletin, April, 1958, p. 469.

*Certification of Non-Payment of Privilege Fee by
Michigan Savings and Loan Associations*

EXHIBIT 23

UNITED STATES OF AMERICA
THE STATE OF MICHIGAN

MICHIGAN CORPORATION AND SECURITIES
COMMISSION

Lansing, Michigan

To All to Whom These Presents Shall Come:

I, Lawrence Gubow, Commissioner of the Michigan Corporation and Securities Commission, do hereby certify that pursuant to your request of February 13, 1958, I have made diligent examination of the records of this office and can find no record of the building and loan associations or savings and loan associations listed in Schedule "A", attached hereto and made a part of this certificate, having filed an annual report for the year 1952 or having paid an annual privilege fee to this Commission for that year.

In testimony whereof, I have hereto set my hand and affixed the Seal of the Commission, in the City of Lansing, this 28th day of February, 1958.

Lawrence Gubow,
Commissioner.

(Seal)

977a

Exhibit 23; Schedule "A"

*Certification of Non-Payment of Privilege Fee by
Michigan Savings and Loan Associations*

SCHEDULE "A"

Calhoun Federal Savings and Loan Association, Battle
Creek, Michigan

Capitol Savings and Loan Association, Lansing, Michi-
gan

Citizens Federal Savings and Loan Association, Port
Huron, Michigan

Detroit and Northern Savings and Loan Association,
Flint, Michigan

Detroit and Northern Savings and Loan Association,
Hancock, Michigan

Down River Federal Savings and Loan Association,
Wyandotte, Michigan

East Lansing Savings and Loan Association, East Lan-
sing, Michigan

First Federal Savings and Loan Association, Flint,
Michigan

First Federal Savings and Loan Association, Jackson,
Michigan

First Savings and Loan Association, Saginaw, Michigan

First Federal Savings and Loan Association, Kalama-
zoo, Michigan

Fidelity Federal Savings and Loan Association, Kala-
mazoo, Michigan

Grand Rapids Mutual Federal Savings and Loan Asso-
ciation, Grand Rapids, Michigan

*Certification of Non-Payment of Privilege^a Fee by
Michigan Savings and Loan Associations*

Guaranty Savings and Loan Association, Wyandotte,
Michigan

Homestead Savings and Loan Association, Albion, Mich-
igan

Industrial Savings and Loan Association, Battle Creek,
Michigan

Iron River Savings and Loan Association, Iron River,
Michigan

Kalamazoo Building and Savings Association, Kalama-
zoo, Michigan

Lansing Savings and Loan Association, Lansing, Michi-
gan

Marshall Savings and Loan Association, Marshall, Mich-
igan

Midland Federal Savings and Loan Association, Mid-
land, Michigan

Mutual Home Federal Savings and Loan Association,
Grand Rapids, Michigan

Saginaw Savings and Loan Association, Saginaw, Michi-
gan

Security Savings and Loan Association, Jackson, Michi-
gan

Three Rivers Savings and Loan Association, Three
Rivers, Michigan

Union Building and Loan Association, Ltd., Lansing,
Michigan

West Side Savings and Loan Association, Grand Rapids,
Michigan

MINNESOTA
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION
INTEREST REPORT

5-16-A
5-23-61

INDUSTRIAL SAVINGS AND LOAN ASSOCIATION

100-111,1952

Seattle Group - (No. 9 1938)		SASAKI GROUP		SASAKI GROUP	
Fixed charges base				Fixed charges - see above schedule for details	
a. Street collection base	100	1,000,000.00		a. Sewerage works base	1,000,000.00
b. G.I. base (see plan)	100	1,000,000.00		b. Electrical works base	1,000,000.00
c. P.M.A. base	100	1,000,000.00		c. Mechanical plant base	1,000,000.00
d.				d. Pay roll base	1,000,000.00
e. Working fund base				Total commitments on the above schedule	4,000,000.00
f. Assured income certificate of authority				Reserve funds - see above schedule for details	
g. Advances for loans, interest, etc. of capital				Advances from P. M. A. Co.	1,000,000.00
Total fixed charges base				General reserve	
Base base				General reserve on advances and interest	
Fixed charge rate on interest				General reserve on capital	
Fixed charge rate on interest				Total interest on capital and other	
a. Assured interest certificate				Interest	6,500,000.00
b. Advances for loans, interest, etc.				Assured profits	
Fixed charge rate					
P. M. A. base - see plan				Less: (a) Profit after taxes	1,000,000.00
Fixed charge rate for investment				Assured profits by interest and other	
a. Profit on P. M. A. Co.				for loans, interest, etc.	2,600,000.00
b. U. S. Savings Bonds				Unassured profits	6,500,000.00
c. U. S. Government obligations				Other profits	
d. Other investment securities				Interest on loans	6,500,000.00
Assured interest on investments of a secured basis				Interest on loans	
Cash on hand and in bank				a. Unassured profit on fixed charges	2,100,000.00
Other holding (see description)				b. Income earned on advances	
Position, stocks and companies (see description)				c. Unassured interest, working base	
Deferred charges				Spills reserve	2,100,000.00
a. Prop. Ins.				a. Unassured interest - loans and working	
b. Prop. Cont. A. & B.				b. Capitalized interest - 2.00 & 2.00	
c. Prop. Adv.				General reserve	200,000.00
d.				a. Legal reserve	
Other assets				b. Federal Reserve reserve	1,550,000.00
a. Assured certificate				c. Bond redemption reserve - Series C	6,100,000.00
b. Gov. Bonds				d. Security reserve - P.L.C.	
c. Gov. Bonds				e.	
d.				f.	
Non-File Loans - P.M.A. Co.				Unassured profit reserve	283,300.00
Current operating expense (see plan)				Current income base	
TOTAL ASSETS				TOTAL LIABILITIES	

MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION
MONTHLY REPORT

CAPITOL SAVINGS & LOAN COMPANY

Location, Name and Address

For Month Ended Dec. 31, 1952

ASSETS		BALANCE SHEET	LIABILITIES
First mortgage loans: (No. of Accts.)			Withdrawable or free shares (include div. funds):
a. Direct reduction loans (2000)	11,971,801.67		a. Institutional savings shares 2,989.00
b. G.I. loans (war's plan) (34)	1,188,748.46		b. Optional savings shares 1,011,000.00
c. F.H.A. loans (94)	3,973,101.34		c. Advanced payment shares 1,000,000.00
d. _____	_____		d. Fully paid shares 9,214,144.00
e. Floating fund loans _____	_____		Total withdrawable or free shares (include dividends) 12,214,144.00
f. Accrued interest receivable (if separate) _____	9,188.71		Unredeemed shares (including div. funds) called for redemption 200.00
g. Advances for taxes, insurance, etc. (if separate) _____	_____		Advances from F. H. I. B. _____
Total first mortgage loans (4048)	17,142,840.18		Unearned assets: _____
Share loans (14)	10,000.00		Interest earned on advances and borrowed money _____
Real estate sold on contract (3)	20,000.00		Dividends declared and unpaid _____
Purchased land contracts (24)	1,000,000.00		Taxes due on real estate owned and other liability _____
a. Accrued interest receivable _____	1,740.75		Accounts payable _____
b. Advances for taxes, insurance, etc. _____	_____		Federal income taxes estimated 17,700.00
Real estate owned: _____	_____		Loans in process (due borrowers) 110,700.00
F. H. I. B. owned—Am's assets _____	6,970.00		Advances payable by borrowers and vendors for taxes, insurance, etc. 133,300.00
Real estate held for redemption (1)	_____		Unapplied mortgage credits 200.00
Investment securities: _____	_____		Other liabilities 600.00
a. Stock in F. H. I. B. _____	400,000.00		Deferred credits to future operations: _____
b. U. S. Savings Bonds _____	800,000.00		a. Unearned profit on land contracts 51,970.00
c. U. S. Government obligations _____	750,000.00		b. Income collected in advance _____
d. Other investment securities _____	5,950.00		c. Unearned discount, non-emp. loans _____
Accrued interest on investments (if on account basis) _____	1,577,850.00		Specific reserves: _____
Cash on hand and in banks _____	579,488.09		a. Uncollected interest—loans and contracts 10,981.00
Office building (this depreciating) _____	_____		b. Capitalized interest—R/BO & R/BI 207.00
Furniture, fixtures and equipment (this depreciable) _____	77,889.00		c. Reserve for discount—books purch. 953.75
Deferred charges: _____	_____		General reserves: _____
a. Insurance and bond premiums 951.00	_____		a. Legal reserve 2,900,000.00
b. Commission fees, contributions etc. 00	_____		b. Federal insurance reserve _____
c. Examination & privilege fees 5,071.00	_____		c. Bond redemption reserve—State G _____
d. Office Bldg Incl. taxes 5,777.00	_____		d. Guaranty reserve—P.L.C. _____
Other assets: _____	_____		e. _____
a. Accounts receivable 2,719.74	_____		f. _____
b. Impounded funds 1.00	_____		Undivided profits reserve 1,079,887.70
c. _____	_____		Current income (total) _____
Non-Mtg. Loans—FHA-VA _____	_____		TOTAL LIABILITIES 22,574,000.00
Current operating expenses (total) _____	22,574,000.00		
TOTAL ASSETS _____	_____		

MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION
MONTHLY REPORT

LANSING SAVINGS AND LOAN ASSOCIATION

For Month Ended

December 31, 1932

Name of Association

ASSETS	BALANCE SHEET	LIABILITIES
Real mortgage loans: a. First mortgage loans (No. of loans) <u>386</u> <u>927,081.92</u> b. G.I. loans (see plan) <u> </u> c. F.H.A. loans <u> </u> d. <u> </u> e. <u> </u> f. <u> </u> g. <u> </u> h. <u> </u> i. <u> </u> j. <u> </u> k. <u> </u> l. <u> </u> m. <u> </u> n. <u> </u> o. <u> </u> p. <u> </u> q. <u> </u> r. <u> </u> s. <u> </u> t. <u> </u> u. <u> </u> v. <u> </u> w. <u> </u> x. <u> </u> y. <u> </u> z. <u> </u> aa. <u> </u> ab. <u> </u> ac. <u> </u> ad. <u> </u> ae. <u> </u> af. <u> </u> ag. <u> </u> ah. <u> </u> ai. <u> </u> aj. <u> </u> ak. <u> </u> al. <u> </u> am. <u> </u> an. <u> </u> ao. <u> </u> ap. <u> </u> aq. <u> </u> ar. <u> </u> as. <u> </u> at. <u> </u> au. <u> </u> av. <u> </u> aw. <u> </u> ax. <u> </u> ay. <u> </u> az. <u> </u> ba. <u> </u> bb. <u> </u> bc. <u> </u> bd. <u> </u> be. <u> </u> bf. <u> </u> bg. <u> </u> bh. <u> </u> bi. <u> </u> bj. <u> </u> bk. <u> </u> bl. <u> </u> bm. <u> </u> bn. <u> </u> bo. <u> </u> bp. <u> </u> bq. <u> </u> br. <u> </u> bs. <u> </u> bt. <u> </u> bu. <u> </u> bv. <u> </u> bw. <u> </u> bx. <u> </u> by. <u> </u> bz. <u> </u> ca. <u> </u> cb. <u> </u> cc. <u> </u> cd. <u> </u> ce. <u> </u> cf. <u> </u> cg. <u> </u> ch. <u> </u> ci. <u> </u> cj. <u> </u> ck. <u> </u> cl. <u> </u> cm. <u> </u> cn. <u> </u> co. <u> </u> cp. <u> </u> cq. <u> </u> cr. <u> </u> cs. <u> </u> ct. <u> </u> cu. <u> </u> cv. <u> </u> cw. <u> </u> cx. <u> </u> cy. <u> </u> cz. <u> </u> da. <u> </u> db. <u> </u> dc. <u> </u> dd. <u> </u> de. <u> </u> df. <u> </u> dg. <u> </u> dh. <u> </u> di. <u> </u> dj. <u> </u> dk. <u> </u> dl. <u> </u> dm. <u> </u> dn. <u> </u> do. <u> </u> dp. <u> </u> dq. <u> </u> dr. <u> </u> ds. <u> </u> dt. <u> </u> du. <u> </u> dv. <u> </u> dw. <u> </u> dx. <u> </u> dy. <u> </u> dz. <u> </u> ea. <u> </u> eb. <u> </u> ec. <u> </u> ed. <u> </u> ee. <u> </u> ef. <u> </u> eg. <u> </u> eh. <u> </u> ei. <u> </u> ej. <u> </u> ek. <u> </u> el. <u> </u> em. <u> </u> en. <u> </u> eo. <u> </u> ep. <u> </u> eq. <u> </u> er. <u> </u> es. <u> </u> et. <u> </u> eu. <u> </u> ev. <u> </u> ew. <u> </u> ex. <u> </u> ey. <u> </u> ez. <u> </u> fa. <u> </u> fb. <u> </u> fc. <u> </u> fd. <u> </u> fe. <u> </u> ff. <u> </u> fg. <u> </u> fh. <u> </u> fi. <u> </u> fj. <u> </u> fk. <u> </u> fl. <u> </u> fm. <u> </u> fn. <u> </u> fo. <u> </u> fp. <u> </u> fq. <u> </u> fr. <u> </u> fs. <u> </u> ft. <u> </u> fu. <u> </u> fv. <u> </u> fw. <u> </u> fx. <u> </u> fy. <u> </u> fz. <u> </u> ga. <u> </u> gb. <u> </u> gc. <u> </u> gd. <u> </u> ge. <u> </u> gf. <u> </u> gg. <u> </u> gh. <u> </u> gi. <u> </u> gj. <u> </u> gk. <u> </u> gl. <u> </u> gm. <u> </u> gn. <u> </u> go. <u> </u> gp. <u> </u> gq. <u> </u> gr. <u> </u> gs. <u> </u> gt. <u> </u> gu. <u> </u> gv. <u> </u> gw. <u> </u> gx. <u> </u> gy. <u> </u> gz. <u> </u> ha. <u> </u> hb. <u> </u> hc. <u> </u> hd. <u> </u> he. <u> </u> hf. <u> </u> hg. <u> </u> hh. <u> </u> hi. <u> </u> hj. <u> </u> hk. <u> </u> hl. <u> </u> hm. <u> </u> hn. <u> </u> ho. <u> </u> hp. <u> </u> hq. <u> </u> hr. <u> </u> hs. <u> </u> ht. <u> </u> hu. <u> </u> hv. <u> </u> hw. <u> </u> hx. <u> </u> hy. <u> </u> hz. <u> </u> ia. <u> </u> ib. <u> </u> ic. <u> </u> id. <u> </u> ie. <u> </u> if. <u> </u> ig. <u> </u> ih. <u> </u> ii. <u> </u> ij. <u> </u> ik. <u> </u> il. <u> </u> im. <u> </u> in. <u> </u> io. <u> </u> ip. <u> </u> iq. <u> </u> ir. <u> </u> is. <u> </u> it. <u> </u> iu. <u> </u> iv. <u> </u> iw. <u> </u> ix. <u> </u> iy. <u> </u> iz. <u> </u> ja. <u> </u> jb. <u> </u> jc. <u> </u> jd. <u> </u> je. <u> </u> jf. <u> </u> jg. <u> </u> jh. <u> </u> ji. <u> </u> jj. <u> </u> jk. <u> </u> jl. <u> </u> jm. <u> </u> jn. <u> </u> jo. <u> </u> jp. <u> </u> jq. <u> </u> jr. <u> </u> js. <u> </u> jt. <u> </u> ju. <u> </u> jv. <u> </u> jw. <u> </u> jx. <u> </u> jy. <u> </u> jz. <u> </u> ka. <u> </u> kb. <u> </u> kc. <u> </u> kd. <u> </u> ke. <u> </u> kf. <u> </u> kg. <u> </u> kh. <u> </u> ki. <u> </u> kj. <u> </u> kk. <u> </u> kl. <u> </u> km. <u> </u> kn. <u> </u> ko. <u> </u> kp. <u> </u> kq. <u> </u> kr. <u> </u> ks. <u> </u> kt. <u> </u> ku. <u> </u> kv. <u> </u> kw. <u> </u> kx. <u> </u> ky. <u> </u> kz. <u> </u> la. <u> </u> lb. <u> </u> lc. <u> </u> ld. <u> </u> le. <u> </u> lf. <u> </u> lg. <u> </u> lh. <u> </u> li. <u> </u> lj. <u> </u> lk. <u> </u> ll. <u> </u> lm. <u> </u> ln. <u> </u> lo. <u> </u> lp. <u> </u> lq. <u> </u> lr. <u> </u> ls. <u> </u> lt. <u> </u> lu. <u> </u> lv. <u> </u> lw. <u> </u> lx. <u> </u> ly. <u> </u> lz. <u> </u> ma. <u> </u> mb. <u> </u> mc. <u> </u> md. <u> </u> me. <u> </u> mf. <u> </u> mg. <u> </u> mh. <u> </u> mi. <u> </u> mj. <u> </u> mk. <u> </u> ml. <u> </u> mm. <u> </u> mn. <u> </u> mo. <u> </u> mp. <u> </u> mq. <u> </u> mr. <u> </u> ms. <u> </u> mt. <u> </u> mu. <u> </u> mv. <u> </u> mw. <u> </u> mx. <u> </u> my. <u> </u> mz. <u> </u> na. <u> </u> nb. <u> </u> nc. <u> </u> nd. <u> </u> ne. <u> </u> nf. <u> </u> ng. <u> </u> nh. <u> </u> ni. <u> </u> nj. <u> </u> nk. <u> </u> nl. <u> </u> nm. <u> </u> nn. <u> </u> no. <u> </u> np. <u> </u> nq. <u> </u> nr. <u> </u> ns. <u> </u> nt. <u> </u> nu. <u> </u> nv. <u> </u> nw. <u> </u> nx. <u> </u> ny. <u> </u> nz. <u> </u> oa. <u> </u> ob. <u> </u> oc. <u> </u> od. <u> </u> oe. <u> </u> of. <u> </u> og. <u> </u> oh. <u> </u> oi. <u> </u> oj. <u> </u> ok. <u> </u> ol. <u> </u> om. <u> </u> on. <u> </u> oo. <u> </u> op. <u> </u> oq. <u> </u> or. <u> </u> os. <u> </u> ot. <u> </u> ou. <u> </u> ov. <u> </u> ow. <u> </u> ox. <u> </u> oy. <u> </u> oz. <u> </u> pa. <u> </u> pb. <u> </u> pc. <u> </u> pd. <u> </u> pe. <u> </u> pf. <u> </u> pg. <u> </u> ph. <u> </u> pi. <u> </u> pj. <u> </u> pk. <u> </u> pl. <u> </u> pm. <u> </u> pn. <u> </u> po. <u> </u> pp. <u> </u> pq. <u> </u> pr. <u> </u> ps. <u> </u> pt. <u> </u> pu. <u> </u> pv. <u> </u> pw. <u> </u> px. <u> </u> py. <u> </u> pz. <u> </u> qa. <u> </u> qb. <u> </u> qc. <u> </u> qd. <u> </u> qe. <u> </u> qf. <u> </u> qg. <u> </u> qh. <u> </u> qi. <u> </u> qj. <u> </u> qk. <u> </u> ql. <u> </u> qm. <u> </u> qn. <u> </u> qo. <u> </u> qp. <u> </u> qq. <u> </u> qr. <u> </u> qs. <u> </u> qt. <u> </u> qu. <u> </u> qv. <u> </u> qw. <u> </u> qx. <u> </u> qy. <u> </u> qz. <u> </u> ra. <u> </u> rb. <u> </u> rc. <u> </u> rd. <u> </u> re. <u> </u> rf. <u> </u> rg. <u> </u> rh. <u> </u> ri. <u> </u> rj. <u> </u> rk. <u> </u> rl. <u> </u> rm. <u> </u> rn. <u> </u> ro. <u> </u> rp. <u> </u> rq. <u> </u> rr. <u> </u> rs. <u> </u> rt. <u> </u> ru. <u> </u> rv. <u> </u> rw. <u> </u> rx. <u> </u> ry. <u> </u> rz. <u> </u> sa. <u> </u> sb. <u> </u> sc. <u> </u> sd. <u> </u> se. <u> </u> sf. <u> </u> sg. <u> </u> sh. <u> </u> si. <u> </u> sj. <u> </u> sk. <u> </u> sl. <u> </u> sm. <u> </u> sn. <u> </u> so. <u> </u> sp. <u> </u> sq. <u> </u> sr. <u> </u> ss. <u> </u> st. <u> </u> su. <u> </u> sv. <u> </u> sw. <u> </u> sx. <u> </u> sy. <u> </u> sz. <u> </u> ta. <u> </u> tb. <u> </u> tc. <u> </u> td. <u> </u> te. <u> </u> tf. <u> </u> tg. <u> </u> th. <u> </u> ti. <u> </u> tj. <u> </u> tk. <u> </u> tl. <u> </u> tm. <u> </u> tn. <u> </u> to. <u> </u> tp. <u> </u> tq. <u> </u> tr. <u> </u> ts. <u> </u> tt. <u> </u> tu. <u> </u> tv. <u> </u> tw. <u> </u> tx. <u> </u> ty. <u> </u> tz. <u> </u> ua. <u> </u> ub. <u> </u> uc. <u> </u> ud. <u> </u> ue. <u> </u> uf. <u> </u> ug. <u> </u> uh. <u> </u> ui. <u> </u> uj. <u> </u> uk. <u> </u> ul. <u> </u> um. <u> </u> un. <u> </u> uo. <u> </u> up. <u> </u> uq. <u> </u> ur. <u> </u> us. <u> </u> ut. <u> </u> uu. <u> </u> uv. <u> </u> uw. <u> </u> ux. <u> </u> uy. <u> </u> uz. <u> </u> va. <u> </u> vb. <u> </u> vc. <u> </u> vd. <u> </u> ve. <u> </u> vf. <u> </u> vg. <u> </u> vh. <u> </u> vi. <u> </u> vj. <u> </u> vk. <u> </u> vl. <u> </u> vm. <u> </u> vn. <u> </u> vo. <u> </u> vp. <u> </u> vq. <u> </u> vr. <u> </u> vs. <u> </u> vt. <u> </u> vu. <u> </u> vv. <u> </u> vw. <u> </u> vx. <u> </u> vy. <u> </u> vz. <u> </u> wa. <u> </u> wb. <u> </u> wc. <u> </u> wd. <u> </u> we. <u> </u> wf. <u> </u> wg. <u> </u> wh. <u> </u> wi. <u> </u> wj. <u> </u> wk. <u> </u> wl. <u> </u> wm. <u> </u> wn. <u> </u> wo. <u> </u> wp. <u> </u> wq. <u> </u> wr. <u> </u> ws. <u> </u> wt. <u> </u> wu. <u> </u> wv. <u> </u> ww. <u> </u> wx. <u> </u> wy. <u> </u> wz. <u> </u> xa. <u> </u> xb. <u> </u> xc. <u> </u> xd. <u> </u> xe. <u> </u> xf. <u> </u> xg. <u> </u> xh. <u> </u> xi. <u> </u> xj. <u> </u> xk. <u> </u> xl. <u> </u> xm. <u> </u> xn. <u> </u> xo. <u> </u> xp. <u> </u> xq. <u> </u> xr. <u> </u> xs. <u> </u> xt. <u> </u> xu. <u> </u> xv. <u> </u> xw. <u> </u> xx. <u> </u> xy. <u> </u> xz. <u> </u> ya. <u> </u> yb. <u> </u> yc. <u> </u> yd. <u> </u> ye. <u> </u> yf. <u> </u> yg. <u> </u> yh. <u> </u> yi. <u> </u> yj. <u> </u> yk. <u> </u> yl. <u> </u> ym. <u> </u> yn. <u> </u> yo. <u> </u> yp. <u> </u> yq. <u> </u> yr. <u> </u> ys. <u> </u> yt. <u> </u> yu. <u> </u> yv. <u> </u> yw. <u> </u> yx. <u> </u> yy. <u> </u> yz. <u> </u> za. <u> </u> zb. <u> </u> zc. <u> </u> zd. <u> </u> ze. <u> </u> zf. <u> </u> zg. <u> </u> zh. <u> </u> zi. <u> </u> zj. <u> </u> zk. <u> </u> zl. <u> </u> zm. <u> </u> zn. <u> </u> zo. <u> </u> zp. <u> </u> zq. <u> </u> zr. <u> </u> zs. <u> </u> zt. <u> </u> zu. <u> </u> zv. <u> </u> zw. <u> </u> zx. <u> </u> zy. <u> </u> zz. <u> </u>	Withdrawable or free share (include 24 cents): a. <u> </u> b. <u> </u> c. <u> </u> d. <u> </u> Total withdrawable or free share (include 24 cents) <u>1,056,743.49</u> Mortgage pledged share (including 24 cents): Advances from F. H. L. B. <u> </u> Borrowed money <u> </u> Interest earned on advances and borrowed money <u> </u> Dividends declared and unpaid <u> </u> Taxes collected on real estate owned and other building <u> </u> Accrual payable <u> </u> Loans to groups (also borrowed) <u> </u> Advances payable by borrowers and vendors for loans, interest, etc. <u> </u> Unapplied mortgage credits <u> </u> Other liabilities <u> </u> Deferred credits to future operations <u> </u> a. <u> </u> b. <u> </u> c. <u> </u> Specific reserves <u> </u> a. Unallocated interest - loans and advances <u>2,192.69</u> b. Capitalized interest - R. B. & R. C. <u> </u> General reserves <u> </u> a. Legal reserve <u>68,675.91</u> b. Federal insurance reserve <u> </u> c. Bond redemption reserve - Series G <u> </u> d. (Insurance) reserve - P.L.C. <u> </u> Undivided profits <u>54,937.92</u> Current income (total) <u>1,012,533.92</u> TOTAL ASSETS	LIABILITIES Total liabilities <u>1,012,533.92</u>

MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION
MONTHLY REPORT

Ex 36-D
5/10/58

Union Building & Loan Ass'n, Inc., Lansing, Michigan

For Month Ending December 31, 1958

ASSETS		BALANCE SHEET	LIABILITIES
Real savings loans (N.B. 2/1/58)			
a. Direct collection loans	1,000	1,000.00	
b. G.I. loans (not in place)	115	115.00	
c. F.H.A. loans			
d. Other			
e. Making good loans			
f. Assured interest receivable (if applicable)		5,000.00	
g. Advances for loans, insurance, etc. (if applicable)			
Total real savings loans		6,115.00	
Share loans			
Real estate sold on contract		200,000.00	
Prepaid real estate			
a. Assured interest receivable			
b. Advances for loans, insurance, etc.			
Real estate owned			
R/E owned—don't count			
Real estate held for redemption			
Investment securities		110,000.00	
a. Stock in F. H. L. B.		90,000.00	
b. U. S. Savings Bonds		20,000.00	
c. U. S. Government obligations			
d. Other investment securities			
Assured interest on investments (if applicable)			
Cash on hand and in bank		190,000.00	
Office building (due depreciation)		75,719.00	
Furniture, fixtures and equipment (due depreciation)		3,926.21	
Prepaid charges:			
a. Prepaid insurance		202.15	
b.			
c.			
d.			
Other assets:			
a. Assured interest receivable			
b.			
c.			
d.			
Non-ldg. Loans—F.H.A.—VA.			
Current operating expense (total)		5,970,262.00	
TOTAL ASSETS			
Withdrawals - See above (Include due checks):			
a. Investment savings checks		1,320,075.00	
b. Optional savings checks			
c. Advance payment checks		1,000,000.00	
d. Fully paid checks		2,000,000.00	
Total withdrawals - See above (Include checks)		4,320,075.00	
Mortgage pledged shares (including due checks)			
Advances from F. H. L. B.		600,000.00	
Current money			
Income received on advances and interest money			
Dividends declared and unpaid			
Taxes accrued on real estate owned and office building		810.00	
Accrued payable			
			65,000.00
Loans to profit (due interest)			
Advances payable by investors and vendors for loans, insurance, etc.		37,671.31	
Unapplied mortgage credits			
Other liabilities			
Deferred credits to future operations:			
a. Unapplied profit on loan contracts		2,000,000.00	
b. Income collected in advance			
c. Unapplied dividend, non-ldg. loans			
Specific reserves:			
a. Unallocated interest—both paid and contract		6,172.23	
b. Capitalized interest—R/RO & R/RR			
c.			
General reserves:			
a. Legal reserve		100,000.00	
b. Federal tax reserve			
c. Bond redemption reserve—Series G			
d. Guaranty reserve—P.L.C.		100,000.00	
e. Contingent Reserve			
f.			
Unallocated profit reserve		200,000.00	
Current income (total)		5,970,262.00	
TOTAL LIABILITIES			

MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION
MONTHLY REPORT

DETROIT & NORTH-W
SAVINGS & LOAN ASSOCIATION

Name of Association

For Month Ending

DECEMBER 31, 1958

ASSETS		BALANCE SHEET	LIABILITIES
Real mortgage loans: (No. of Accts)			
a. Direct mortgage loans	4263	16,472,341.26	
b. U. I. loans (net's plus)	709	3,313,539.50	
c. F. H. A. loans			
d. Other			
e. Floating fund loans			
f. Advanced interest receivable (if separate)			
g. Advances for taxes, insurance, etc. (if separate)			
Total Real mortgage loans	4972	19,785,880.76	
Share loans	37	58,936.45	
Real estate sold on contract	17	12,778.31	
Partially paid contracts	233	3,343,061.88	
a. Advanced interest receivable			
b. Advances for taxes, insurance, etc.			
Real estate owned			
R. E. owned—less R. E. cost			
Real estate held for redemption	4	27,718.40	
Investment securities:			
a. Stock in F. H. A. B.		450,000.00	
b. U. S. Savings Bonds		547,385.00	
c. U. S. Government obligations		1,882,160.85	
d. Other investment securities			
Advanced interest on investments (if on separate basis)		0	
Cash on hand and in banks		1,009,841.30	
Other banking (due depositions)		130,288.09	
Furniture, fixtures and equipment (less depreciation)		27,752.41	
Deferred charges:			
a. Amort. Bd. Prem.		1,748.26	
b.			
c.			
d.			
Other assets:			
a. Assets receivable			
b. Pay. Bd. Bonds		6,985.21	
c. Capital Mortgage		498.75	
Reserve Loans—FHA-VA			
Current operating expenses (cash)			
TOTAL ASSETS		24,476,981.83	
			Withdrawals - or due share (check off):
			a. Installment savings share
			b. Optional savings share
			c. Advanced payment share
			d. Fully paid share
			Total withdrawals - or due share (check off) (dividends)
			Mortgage pledged share (check off) (dividends)
			Advances from F. H. A. B.
			Borrowed money
			Interest earned on advances and borrowed money
			Dividends declared and unpaid
			Taxes earned on real estate owned and office building
			Accounts payable
			Loans to persons (due interest)
			Advances payable by borrowers and vendors for taxes, insurance, etc.
			Unapplied mortgage credits
			Other liabilities
			Deferred credits to future operations:
			a. Unearned profit on bond contracts
			b. Income collected in advance
			c. Unearned dividend, non-adv. loans
			Specific reserves:
			a. Unallocated interest—loans and contracts
			b. Capitalized interest—B/D & R. E. B.
			General reserves:
			a. Legal reserve
			b. Federal Insurance reserve
			c. Bond redemption reserve—Series G
			d. Guaranty reserve—P.L.C.
			Unallocated profit
			Current income (cash)
			TOTAL LIABILITIES

MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION
MONTHLY REPORT

MONTHLY SAVINGS AND LOAN ASSOCIATION

For Month Ended **DECEMBER 31, 1959**

ASSETS		BALANCE SHEET	LIABILITIES	
First mortgage loans: (See 2-10)			Withdrawals or less than funds div. checks:	
a. Home reduction loans	222	222,000.00	a. Withdrawal savings share	1,111.11
b. G.I. loans (G.I.'s plan)			b. Optional savings share	1,111.11
c. F.H.A. loans			c. Advance payment share	1,111.11
d.			d. Fully paid share	1,111.11
e. Floating first loans			Total withdrawals or less than funds div. checks	4,444.44
f. Approved business creditworthiness of applicant		100.00	Mortgage pledged share (including div. checks)	222,000.00
g. Advances for term, insurance, etc. (if approved)			Advances from F. H. L. B.	22,000.00
Total first mortgage loans	222	222,000.00	Reversed entry	
Share loans		100.00	Interest earned on advances and reversed entry	
Real estate sold on contract			Deposits collected and unpaid	
Forwarded first mortgage			Trusts collected on real estate owned and other building	
a. Approved business creditworthiness			Amounts payable	
b. Advances for term, insurance, etc.			Unpaid mortgage tax	244.00
			P.I.C.A. tax	1,000.00
Real estate owned			Loans in process (plus borrowed)	1,000.00
R/O owned—Aur's own			Advances payable by borrowers and vendors for term, insurance, etc.	
Real estate held for redemption			Unapplied mortgage credits	
Investment securities:			Other liabilities	
a. Stock in F. H. L. B.		10,000.00	Deferred credits to future operations:	
b. U. S. Savings Bonds			a. Unearned profit on land contracts	
c. U. S. Government obligations		10,000.00	b. Income collected in advance	
d. Other investment securities			c. Unearned discount, etc.—mty. loan	
Approved interest on investments (if as agreed basis)			Specific reserves:	
Cash on hand and in banks		40,000.00	a. Unallocated interest—loans and contracts	272.00
Office building (less depreciation)		4,140.00	b. Capitalized interest—R/O & R/EN	
Furniture, fixtures and equipment (less depreciation)		222.00	c. Other	
Delayed charges:			General reserve	
a. Unpaid Insurance		224.00	a. Legal reserve	11,000.00
b.			b. Federal insurance reserve	
c.			c. Bond redemption reserve—Series G	
d.			d. Guaranty reserve—P.L.C.	
Other assets:			e. Contingency	10,000.00
a. Assets realizable			f.	
b.			Unallocated profit reserve	1,000.00
c.			Current income (total)	110,000.00
d.			TOTAL LIABILITIES	710,000.00
Non-Mtg. Loans—FHA-VA				
Current operating expenses (total)		710,000.00		
TOTAL ASSETS		710,000.00		

MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION
MONTHLY REPORT

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MEMBERS SAVING & LOAN ASSOCIATION, ALBION, MICHIGAN For Month Ended **SEPTEMBER 30, 1958**
Association Name and Address

ASSETS		BALANCE SHEET	LIABILITIES
First mortgage loans: (No. of loans)			Withdrawable or free shares (Include div- dends):
a. Direct collection loans (236)	\$ 689,706.87		a. Installment savings shares 165,163.48
b. G.I. loans (war's plan) (5)	16,717.87		b. Optional savings shares .00
c. F.H.A. loans (3)	.00		c. Advanced payment shares .00
d. ()	.00		d. Fully paid shares 24,886.88
e. Building fund loans ()	.00		Total withdrawable or free shares (Include dividends) 769,361.64
f. Accrued interest creditable (if reported) ()	.00		
g. Advances for taxes, insurance, etc. (if reported) ()	.00		Mortgages pledged shares (including div- dends) .00
Total first mortgage loans (240)	706,424.74		Advances from F. H. L. B. 180,000.00
Share loans ()	.00		Borrowed money .00
Real estate sold on contract ()	.00		Interest accrued on advances and borrowed money .00
Purchased land contracts (2)	1,833.93		Dividends declared and unpaid .00
a. Accrued interest creditable ()	.00		Taxes accrued on real estate owned and office building .00
b. Advances for taxes, insurance, etc. ()	.00		Accounts payable .00
Real estate owned ()	.00		Loans to groups (plus interest) 1,018.13
R. E. owned—less'n's cost ()	.00		Advance payments by borrowers and vendors for taxes, insurance, etc. .00
Real estate held for redemption ()	.00		Unapplied mortgage credits .00
Investment securities:			Other liabilities 169.17
a. Stock in F. H. L. B. 15,000.00			Deferred credits to future operations:
b. U. S. Savings Bonds 143,286.00			a. Unearned profit on land contracts 337.98
c. U. S. Government obligations .00			b. Income collected in advance .00
d. Other investment securities .00			c. Unearned discount, non-orig. loans .00
Accrued interest on investments (if on accrued basis) .00			Specific reserves:
Cash on hand and in banks 316,867.87			a. Unallocated interest—loans and contracts 446.85
Office building (less depreciation) 6,888.00			b. Capitalized interest—R/WO & R/EN .00
Furniture, fixtures and equipment (less de- preciation) 1,098.12			c. .00
Deferred charges:			General reserves:
a. .00			a. Legal reserve 11,641.75
b. .00			b. Federal insurance reserve 13,117.50
c. .00			c. Bond redemption reserve—Series G 1,972.00
d. .00			d. Currency reserve—P.L.C. .00
Other assets:			e. .00
a. Accrued rentable .00			f. .00
b. .00			Unallocated profit reserve 22,913.25
c. .00			Current income (total) .00
d. .00			TOTAL LIABILITIES 769,361.64
Non-orig. Loans—FHA-VA () .00			
Current operating expenses (total) .00			
TOTAL ASSETS 706,424.74			

MICHIGAN
DEPARTMENT OF STATE
FIRST SAVINGS & LOAN ASSOCIATION
JEFFERSON AT FEDERAL
BAGINAW MICHIGAN

BUILDING AND LOAN DIVISION
MONTHLY REPORT

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For Month Ended **DEC 31 1933**

Available Name and Address

ASSETS		BALANCE SHEET		LIABILITIES	
(In \$)					
For savings loans:					
a. Direct reduction loans	10,100,000.00	a. Investment savings shares	10,100,000.00		
b. G.I. loans (Gov't plan)	1,000,000.00	b. Optional savings shares	10,100,000.00		
c. F.H.A. loans	100,000.00	c. Advanced payment shares	1,000,000.00		
d. ()		d. Fully paid shares	1,000,000.00		
e. ()		Total withdrawable or less than (State of)	10,100,000.00		
f. ()		(State of)			
g. ()		Margin pledged shares (including G.I. shares)	10,100,000.00		
h. ()		Advances from F. H. L. B.	10,100,000.00		
i. ()		Unearned money			
j. ()		Interest earned on advances and unearned money	10,100,000.00		
k. ()		Dividends declared and unpaid			
l. ()		Transfers carried on and other assets and other holding			
m. ()		Accounts payable	1,000,000.00		
n. ()		Reserves for (State of)	1,000,000.00		
o. ()		Transfers for	1,000,000.00		
p. ()		Loans in process (not included)	1,000,000.00		
q. ()		Advances payable by borrowers and vendors for maintenance, etc.	1,000,000.00		
r. ()		Unpledged savings shares			
s. ()		Other holding			
t. ()		Unpledged shares to future operations			
u. ()		a. Unearned profit on loan contracts	1,000,000.00		
v. ()		b. Income collected in advance	1,000,000.00		
w. ()		c. Unearned discount, one-way loan	1,000,000.00		
x. ()		Specific reserves:			
y. ()		a. Unpledged interest—base and advance	1,000,000.00		
z. ()		b. Capitalized interest—base and advance	1,000,000.00		
aa. ()		c. Treasury Bond Redemption	1,000,000.00		
ab. ()		General reserve:			
ac. ()		a. Legal reserve	1,000,000.00		
ad. ()		b. Federal Reserve reserve	1,000,000.00		
ae. ()		c. Bond redemption reserve—State Q			
af. ()		d. Guaranty reserve—P.L.C.			
ag. ()		e. ()			
ah. ()		f. ()			
ai. ()		Unpledged profit reserve	1,000,000.00		
aj. ()		Current income (State)			
ak. ()		TOTAL LIABILITIES	10,100,000.00		
al. ()					
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MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION
MONTHLY REPORT

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BANKING SAVINGS AND LOAN ASSOCIATION

For Month Ending December 31, 1958

ASSETS		BALANCE SHEET	LIABILITIES	
First mortgage loans: (No. of loans)			Withdrawable or free shares (Include div. earnings and pay)	
a. Direct reduction loans	1,300	5,275,728.11	b. Withdrawable savings shares	844.00
b. G.I. loans (war's plan)	197	513,106.40	c. Optional savings shares	5,800,000.00
c. F.H.A. loans			d. Advanced payment shares	
d.			e. Fully paid shares	931,001.50
e. Floating fund loans			Total withdrawable or free shares (Include dividends)	6,405,994.40
f. Advanced interest receivable (if applicable)			Mortgage pledged shares (including div. earnings)	
g. Advances for taxes, insurance, etc. (if applicable)			Advances from F. H. L. B.	
Total first mortgage loans	1,497	5,788,834.51	Unearned money	
Share loans			Interest earned on advances and borrowed money	
Real estate sold on contract	2	25,000.00	Dividends declared and unpaid	
Refunded loan contracts	42	117,000.00	Taxes earned on real estate owned and office building	
Advanced interest receivable			Accounts payable	750.00
b. Advances for taxes, insurance, etc.				
Real estate owned			Loans in profits (due borrowers)	809,000.00
R/E owned—Am's acct.			Advances payable by borrowers and vendors for taxes, insurance, etc.	
Real estate held for redemption			Unsettled mortgage credits	
Investment securities:			Other liabilities	
a. Stock in F. H. L. B.		130,000.00	Deferred credits to future operations:	
b. U. S. Savings Bonds			a. Unearned profit on land contracts	13,406.66
c. U. S. Government obligations		775,000.00	b. Income collected in advance	
d. Other investment securities			c. Unearned dividend, non-div. loans	1,433.40
Advanced interest on investments (if all earned)			Specific reserves:	
Real estate		130,000.00	a. Unallocated interest—loans and contracts	2,117.00
Cash on hand and in banks		199,000.00	b. Capitalized interest—R/ED & R/ED	
Office building (less depreciation)		199,000.00	c.	
Furniture, fixtures and equipment (less depreciation)		17,100.00	General reserves:	
Deferred charges:			a. Legal reserve	230,775.00
a. Prepaid 1959-60 Premium		32.00	b. Federal insurance reserve	20,000.00
b. Prepaid 1959-60		440.00	c. Bond redemption reserve—Series G	4,000.00
c.			d. Currency reserve—P.L.C.	4,100.00
d.			e.	
Other assets:			f.	
a. Accounts receivable			Unallocated profit reserve	377,000.00
b. U. S. Bonds - Redeemed		1,110.00	Current income (total)	
c. U. S. Bonds - Unredeemed			TOTAL LIABILITIES	7,412,434.51
d.				
Non-Reg. Loans—FHA-VA	37	25,000.00		
Current operating expenses (total)		7,412,434.51		
TOTAL ASSETS		7,412,434.51		

1952 Annual Report of Homestead Savings and Loan
Association to the Secretary of State

EXHIBIT 37-A

STATE OF MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION

ANNUAL REPORT

of

Homestead Savings and Loan Association
403 South Superior St., Albion, Michigan

to the

SECRETARY OF STATE

at the close of business June 30, 1952

Incorporated August 14, 1889

Authorized Capital \$2,000,000.00

CERTIFICATION

I, Emil F. Holtz, President and I, Wayne L. Dellage,
Secretary of the Homestead Savings and Loan Associa-
tion, do hereby solemnly swear that, to the best of our
knowledge and belief, the books and records of said asso-
ciation correctly reflect the true financial condition there-
of; the statements, schedules and data contained herein
are true and correct; the signatures appearing on all
notes, mortgages and other instruments in connection
therewith are genuine; and there are no undisclosed as-
sets or liabilities.

Emil F. Holtz, President
Wayne L. Dellage, Secretary

(Seal of Association)

Subscribed and sworn to before me this 22nd day of
August, 1952.

Wm. M. Weeks

Notary Public

My commission expires 10-1-52.

(Notarial Seal)

990a

Exhibit 37-C

1952 Annual Report of Industrial Savings and Loan
Association to the Secretary of State

SCHEDULE 14

MEMBERS' AND INVESTORS' ACCOUNTS

	Number Holders	Total of Such Accounts
(a) Members' and/or investors' ac- counts with aggregate balance of \$10,000 or less.....	503	\$647,312.55
(b) Members' and/or investors' ac- counts with aggregate balance of over \$10,000	4	46,867.83
Totals	507	\$694,280.38

EXHIBIT 37-C

STATE OF MICHIGAN

DEPARTMENT OF STATE

BUILDING AND LOAN DIVISION

ANNUAL REPORT

of

Industrial Savings & Loan Association
8 West Michigan Ave., Battle Creek, Michigan

to the

SECRETARY OF STATE

at the close of business June 30, 1952

Incorporated January 12, 1925

Authorized Capital \$8,000,000.00

CERTIFICATION

I, William HOFFLEY, President, and I, Julia A. Martin,
Secretary of the Industrial Savings and Loan Associa-
tion of Battle Creek, do hereby solemnly swear that, to
the best of our knowledge and belief, the books and rec-

*1952 Annual Report of Industrial Savings and Loan
Association to the Secretary of State*

ords of said association correctly reflect the true financial condition thereof; the statements, schedules and data contained herein are true and correct; the signatures appearing on all notes, mortgages and other instruments in connection therewith are genuine; and there are no undisclosed assets or liabilities.

William HOFFLEY, President
Julia A. MARTIN, Secretary

(Seal of Association)

Subscribed and sworn to before me this 20th day of August, 1952:

Charles P. Walters
Notary Public in and for Calhoun County,
Michigan
My commission expires May 24, 1955.

(Notarial Seal)

SCHEDULE 14
MEMBERS' AND INVESTORS' ACCOUNTS

	Number Holders	Total of Such Accounts
(a) Members' and/or investors' accounts with aggregate balance of \$10,000 or less.....	583	\$5,040,494.06
(b) Members' and/or investors' accounts with aggregate balance of over \$10,000.....	42	561,963.59
Totals	625	\$5,602,457.65

992a

Exhibit 37-D-1

*1952 Annual Report of East Lansing Savings and Loan
Association to the Secretary of State*

EXHIBIT 37-D-1

STATE OF MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION

ANNUAL REPORT

of

East Lansing Savings and Loan Association
303 Abbott Road, East Lansing, Michigan
to the

SECRETARY OF STATE

at the close of business June 30, 1952

Incorporated August 4, 1919

Authorized Capital \$10,000,000.00

CERTIFICATION

I, S. G. Whittemore, Executive Vice President and I, Kenneth B. Dillinger, Secretary of the East Lansing Savings and Loan Association do hereby solemnly swear that, to the best of our knowledge and belief, the books and records of said association correctly reflect the true financial condition thereof; the statements, schedules and data contained herein are true and correct; the signatures appearing on all notes, mortgages and other instruments in connection therewith are genuine; and there are no undisclosed assets or liabilities.

S. G. Whittemore, Exec. V. President
Kenneth B. Dillinger, Secretary

(Seal of Association)

Subscribed and sworn to before me this 18th day of
July, 1952.

Margaret R. Greenwood
Notary Public

(Notarial Seal)

1952 Annual Report of Detroit and Northern Savings and
Loan Association to the Secretary of State

SCHEDULE 14.

MEMBERS' AND INVESTORS' ACCOUNTS

	Number Holders	Total of Such Accounts
(a) Members' and/or investors' accounts with aggregate bal- ances of \$10,000 or less.....	1554	\$2,626,712.43
(b) Members' and/or investors' accounts with aggregate bal- ances of over \$10,000.....	34	528,076.12
Totals	1588	<u>\$3,154,788.55</u>

EXHIBIT 37-E-1

STATE OF MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION

ANNUAL REPORT

of

Detroit and Northern Savings & Loan Association
200 Quincy Street, Hancock, Michigan
to the

SECRETARY OF STATE

at the close of business June 30, 1952

Incorporated Dec. 31, 1888

Authorized Capital \$50,000,000.00

CERTIFICATION

I, W. Corbin Douglass, President and I, D. W. Seaton,
Secretary of the Detroit & Northern Savings & Loan
Association, do hereby solemnly swear that, to the best

*1952 Annual Report of Detroit and Northern Savings and
Loan Association to the Secretary of State*

of our knowledge and belief, the books and records of said association correctly reflect the true financial condition thereof; the statements, schedules and data contained herein are true and correct; the signatures appearing on all notes, mortgages and other instruments in connection therewith are genuine; and there are no undisclosed assets or liabilities.

W. Corbin Douglass, President
D. W. Seaton, Secretary

(Seal of Association)

Subscribed and sworn to before me this 5th day of August, 1952.

Blanche B. MacLean,
Notary Public, Houghton Co., Mich.
My commission expires May 31, 1954.

(Notarial Seal)

• • • • •

SCHEDULE 14

MEMBERS' AND INVESTORS' ACCOUNTS

	Number Holders	Total of Such Accounts
(a) Members' and/or investors' accounts with aggregate balances of \$10,000 or less.....	13,801	\$16,193,051.49
(b) Members' and/or investors' accounts with aggregate balances of over \$10,000,	168	2,458,025.43
Totals	<u>13,969</u>	<u>\$18,651,076.92</u>

Exhibit 37-F-1

995a

*1952 Annual Report of Iron Savings and Loan Association
to the Secretary of State*

EXHIBIT 37-F-1

**STATE OF MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION**

ANNUAL REPORT

of

**Iron Savings and Loan Association
425 3rd Avenue, Iron River, Michigan**

to the

SECRETARY OF STATE

at the close of business June 30, 1952

Incorporated October 7, 1905

Authorized Capital \$1,000,000

CERTIFICATION

I, Ben L. Quirt, President and I, P. A. Newberg, Secretary of the Iron Savings and Loan Association, do hereby solemnly swear that, to the best of our knowledge and belief, the books and records of said association correctly reflect the true financial condition thereof; the statements, schedules and data contained herein are true and correct; the signatures appearing on all notes, mortgages and other instruments in connection therewith are genuine; and there are no undisclosed assets or liabilities.

Ben L. Quirt, President

P. A. Newberg, Secretary

(Seal of Association)

**Subscribed and sworn to before me this 18th day of
July, 1952.**

Guy M. Cox,

Notary Public, Iron County, Michigan.

My commission expires December 26, 1962.

996a

*Exhibit 37-H**1952 Annual Report of Marshall Savings and Loan
Association to the Secretary of State*

SCHEDULE 14

MEMBERS' AND INVESTORS' ACCOUNTS

	Number Holders	Total of Such Accounts
(a) Members' and/or investors' ac- counts with aggregate balances of \$10,000 or less.....	284	\$301,903.14
(b) Members' and/or investors' ac- counts with aggregate balances of over \$10,000	0	0
Totals	284	\$301,903.14

EXHIBIT 37-H

STATE OF MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION

ANNUAL REPORT

of

Marshall Savings and Loan Association
227 E. Michigan Ave., Marshall, Michigan
to the

SECRETARY OF STATE

at the close of business June 30, 1952

Incorporated February 3rd, 1920

Authorized capital \$1,500,000.00

CERTIFICATION

I, Manlius M. Porrett, Jr., President and I, Clayton C.
Andersen, Secretary of the Marshall Savings and Loan
Association, do hereby solemnly swear that, to the best

*1952 Annual Report of Marshall Savings and Loan
Association to the Secretary of State*

of our knowledge and belief, the books and records of said association correctly reflect the true financial condition thereof; the statements, schedules and data contained herein are true and correct; the signatures appearing on all notes, mortgages and other instruments in connection therewith are genuine; and there are no undisclosed assets or liabilities.

Manlius M. Porrett, Jr., President
Clayton C. Andersen, Secretary

(Seal of Association)

Subscribed and sworn to before me this 20th day of August, 1952.

Marie E. Ott
Notary Public

(Notarial Seal)

• • • • •

SCHEDULE 14

MEMBERS' AND INVESTORS' ACCOUNTS

	Number Holders	Total of Such Accounts
(a) Members' and/or investors' accounts with aggregate balances of \$10,000 or less.....	272	\$463,412.22
(b) Members' and/or investors' accounts with aggregate balances of over \$10,000	10	109,271.52
Totals	282	<u>\$572,689.74</u>

998a

Exhibit 37-I-1

*1952 Annual Report of Capitol Savings and Loan
Association to the Secretary of State*

EXHIBIT 37-I-1

**STATE OF MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION**

ANNUAL REPORT

of

**Capitol Savings & Loan Company
112-114 East Allegan, Lansing, Michigan
to the**

SECRETARY OF STATE

at the close of business June 30, 1952

Incorporated March 4, 1890

Authorized Capital \$25,000,000.00

CERTIFICATION

I, J. I. Van Keuren, President and I, Neal Spangenberg, Treasurer, of the Capitol Savings & Loan Company, do hereby solemnly swear that, to the best of our knowledge and belief, the books and records of said association correctly reflect the true financial condition thereof; the statements, schedules and data contained herein are true and correct; the signatures appearing on all notes, mortgages and other instruments in connection therewith are genuine; and there are no undisclosed assets or liabilities.

**J. I. Van Keuren, President
Neal Spangenberg, Treasurer**

(Seal of Association)

**Subscribed and sworn to before me this 31st day of
July, 1952.**

Robert E. Clark

**Notary Public, Ingham County, Mich.
My commission expires June 25, 1956.**

(Notarial Seal)

1952 Annual Report of Lansing Savings and Loan
Association to the Secretary of State

SCHEDULE 14

MEMBERS' AND INVESTORS' ACCOUNTS

	Number Holders	Total of Such Accounts
(a) Members' and/or investors' accounts with aggregate bal- ances of \$10,000 or less.....	9048	\$13,525,560.90
(b) Members' and/or investors' accounts with aggregate bal- ances of over \$10,000.....		
Detroit Office	1	10,351.77
Lansing Office	230	3,713,469.97
Totals	9279	\$17,249,382.64

EXHIBIT 37-J-1

STATE OF MICHIGAN

DEPARTMENT OF STATE

BUILDING AND LOAN DIVISION

ANNUAL REPORT

of

Lansing Savings and Loan Association
117 W. Allegan St., Lansing, Michigan
to the

SECRETARY OF STATE

at the close of business June 30, 1952

Incorporated Nov. 30, 1910

Authorized Capital \$4,000,000.00

CERTIFICATION

I, E. J. Carroll, President and I, Oscar C. Bleed, Sec-
retary of the Lansing Savings and Loan Association, do

1000a

Exhibit 37-J-1

*1952 Annual Report of Lansing Savings and Loan
Association to the Secretary of State*

hereby solemnly swear that, to the best of our knowledge and belief, the books and records of said association correctly reflect the true financial condition thereof; the statements, schedules and data contained herein are true and correct; the signatures appearing on all notes, mortgages and other instruments in connection therewith are genuine; and there are no undisclosed assets or liabilities.

E. J. Carroll, President
Oscar C. Bleed, Secretary

(Seal of Association)

Subscribed and sworn to before me this 24th day of July, 1952.

M. Elizabeth Bauer
Notary Public
My Comm. expires 1-3-54

(Notarial Seal)

SCHEDULE 14

MEMBERS' AND INVESTORS' ACCOUNTS

	Number Holders	Total of Such Accounts
(a) Members' and/or investors' accounts with aggregate balances of \$10,000 or less.....	666	\$1161,904.09
(b) Members' and/or investors' accounts with aggregate balances of over \$10,000.....	17	252,880.00
Totals	683	\$1414,784.09

Exhibit 37-K-1

1001a

*1952 Annual Report of Union Building and Loan
Association to the Secretary of State*

EXHIBIT 37-K-1

**STATE OF MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION
ANNUAL REPORT**

of

**Union Building and Loan Association, Limited
121 West Allegan St., Lansing 23, Michigan**

to the

SECRETARY OF STATE

at the close of business June 30, 1952

Incorporated June 2, 1886

Authorized Capital \$8,000,000.00

CERTIFICATION

I, H. M. Andrews, Vice President and I, N. S. Andersen, Secretary of the Union Building and Loan Association, Limited, do hereby solemnly swear that, to the best of our knowledge and belief, the books and records of said association correctly reflect the true financial condition thereof; the statements, schedules and data contained herein are true and correct; the signatures appearing on all notes, mortgages and other instruments in connection therewith are genuine; and there are no undisclosed assets or liabilities.

**H. M. Andrews, Vice President
N. S. Andersen, Secretary**

(Seal of Association)

1002a

Exhibit 37K-1

*1952 Annual Report of Union Building and Loan
Association to the Secretary of State*

Subscribed and sworn to before me this 22nd day of
August, 1952.

Annabelle B. Hickox,
Notary Public

My commission expires Nov. 5, 1955.

(Notarial Seal)

• • • • •

SCHEDULE 14

MEMBERS' AND INVESTORS' ACCOUNTS

	Number Holders	Total of Such Accounts
(a) Members' and/or investors' accounts with aggregate bal- ances of \$10,000 or less.....	—	\$ —
(b) Members' and/or investors' accounts with aggregate bal- ances of over \$10,000.....	—	—
Totals	<u>5043</u>	<u>\$3,912,724.75</u>

Exhibit 37-M-1

1003a

1952 Annual Report of First Savings and Loan Association of Saginaw to the Secretary of State

EXHIBIT 37-M-1

**STATE OF MICHIGAN
DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION
ANNUAL REPORT**

of

**First Savings & Loan Association of Saginaw, Michigan
124 S. Jefferson Avenue, Saginaw, Michigan
to the**

SECRETARY OF STATE

at the close of business June 30, 1952

Incorporated April 7, 1887

Authorized Capital \$17,000,000.00

CERTIFICATION

I, James H. Jerome, Executive Vice-President and I, Karl W. Ahrens, Secretary of the First Savings & Loan Association of Saginaw, Michigan, do solemnly swear that, to the best of our knowledge and belief, the books and records of said association correctly reflect the true financial condition thereof; the statements, schedules and data contained herein are true and correct; the signatures appearing on all notes, mortgages and other instruments in connection therewith are genuine; and there are no undisclosed assets or liabilities.

**James H. Jerome, Executive Vice-President
Karl W. Ahrens, Secretary**

(Seal of Association)

1004a

Exhibit 37-M-1

1952 Annual Report of First Savings and Loan Association of Saginaw to the Secretary of State

Subscribed and sworn to before me this 26th day of July, 1952.

Milton A. Bender

Notary Public

My commission expires 2/22/55

(Notarial Seal)

• • • • •

SCHEDULE 14

MEMBERS' AND INVESTORS' ACCOUNTS

	Number Holders	Total of Such Accounts
(a) Members' and/or investors' accounts with aggregate balances of \$10,000 or less.....	.....	\$ .....
(b) Members' and/or investors' accounts with aggregate balances of over \$10,000.....	.....	\$ .....
Totals	<u>5869</u>	<u>\$13,063,829.20</u>

*1952 Annual Report of Saginaw Savings and Loan
Association to the Secretary of State*

EXHIBIT 37-N-1

**DEPARTMENT OF STATE
BUILDING AND LOAN DIVISION**

ANNUAL REPORT

of

**Saginaw Savings and Loan Association
219 South Michigan Avenue, Saginaw, Michigan
to the**

SECRETARY OF STATE

at the close of business June 30, 1952

Incorporated January 26, 1888

Authorized Capital \$10,000,000.00

CERTIFICATION

**I, A. A. Alderton, President and I, Eugene Pheiffer,
Secretary of the Saginaw Savings and Loan Association,
do hereby solemnly swear that, to the best of our knowl-
edge and belief, the books and records of said association
correctly reflect the true financial condition thereof; the
statements, schedules and data contained herein are true
and correct; the signatures appearing on all notes, mort-
gages and other instruments in connection therewith are
genuine; and there are no undisclosed assets or liabili-
ties.**

**A. A. Alderton, President
Eugene Pheiffer, Secretary**

(Seal of Association)

1006a

Exhibit 37-N-1

1952 Annual Report of Saginaw Savings and Loan
Association to the Secretary of State

Subscribed and sworn to before me this 6th day of
August, 1952.

Emelie E. Carlson

Notary Public, Saginaw County, Michigan
My commission expires January 27, 1953

(Notarial Seal)

SCHEDULE 14

MEMBERS' AND INVESTORS' ACCOUNTS

	Number Holders	Total of Such Accounts
(a) Members' and/or investors' accounts with aggregate bal- ances of \$10,000 or less.....	2686	\$4,263,330.11
(b) Members' and/or investors' accounts with aggregate bal- ances of over \$10,000.....	86	1,137,697.49
Totals	2772	<u>\$5,401,027.60</u>

STATEMENT OF CONDITION

CITIZENS FEDERAL SAVINGS AND LOAN ASSOCIATION

EX 45A
5-20-58
OK

OF PORT HURON

PORT HURON, MICHIGAN

After the Close of Business on December 31, 1947

ASSETS		LIABILITIES	
First Mortgage Loans	\$2,132,156.37	Members' Share Accounts	\$2,389,254.18
Loans on Pass Books and Certificates	7,977.93	Advances from Federal Home Loan Bank	400,000.00
Properties Sold on Con- tract	69,809.05	Loans in Process	43,983.65
Investments and Securities	510,000.00	Other Liabilities	20,045.27
Cash on Hand and in Banks	202,951.97	Specific Reserves	2,523.11
Office Building and Equip- ment less depreciation	20,199.96	General Reserves	73,258.48
Deferred Charges and Other Assets	7,794.62	Undivided Profits	21,825.22
	<u>\$2,950,889.92</u>		<u>\$2,950,889.92</u>

STATE OF MICHIGAN — ss.
COUNTY OF ST. CLAIR

Bert D. Wright, Secretary of the Citizens Federal Savings and Loan Association of Port Huron, being duly sworn, deposes and says that the foregoing statement is true to the best of his knowledge and belief.

BERT D. WRIGHT,
Secretary

Subscribed and sworn to before me this 9th day of January A.D., 1948.

JAMES E. WHALING
Notary Public, St. Clair County, Michigan
My commission expires June 17, 1951

Jan. 12, 1948

STATEMENT OF CONDITION

CITIZENS FEDERAL SAVINGS AND LOAN ASSOCIATION

PX 45-F
5-20-52
OF PORT HURON

PORT HURON, MICHIGAN

After the Close of Business on December 31, 1952

ASSETS

Cash on Hand and in Banks	\$ 534,946.44
U.S. Government Bonds	515,000.00
Stock in Federal Home Loan Bank	130,000.00
First Mortgage Loans	6,360,036.34
Loans on Savings Accounts	7,332.21
FHA Improvement Loans	103,979.82
Properties Sold on Contract	10,531.19
Real Estate Owned	6,834.83
Office Building and Equipment	139,179.90
Deferred Charges and Other Assets	5,495.80
	<u>\$7,802,536.53</u>

CAPITAL and LIABILITIES

Savings Accounts	\$6,776,388.81
Advances from Federal Home Loan Bank	\$21,775.00
Loans in Process	\$3,741.71
Other Liabilities	\$7,181.62
Specific Reserves	17,334.17
General Reserves	207,815.66
Surplus	30,612.56
	<u>\$7,802,536.53</u>

STATE OF MICHIGAN
County of St. Clair

s.s.

Ray D. Wright, Executive Vice-President of Citizens Federal Savings and Loan Association of Port Huron, being duly sworn, deposes and says that the foregoing statement is true to the best of his knowledge and belief.

RAY D. WRIGHT

Executive Vice-President

Subscribed and sworn to before me this 2nd day of January, A.D. 1953.

WILLIAM J. SCHWITZ

Notary Public, St. Clair County, Michigan
My commission expires Feb. 28, 1955.

OFFICERS AND DIRECTORS

James F. Sharp—President
Harry M. Towner—Vice President
John D. Marsh—Vice President
Ray D. Wright—Executive Vice President and Treasurer

Don Walsh
Thomas S. Seaphole

Ann C. Barry—Secretary
Lester L. Gault—Asst. Secretary
James E. Whiting, Asst. Treasurer
Robert H. Miller—Asst. Treasurer
Ray S. Richards
James P. Scarce

Frank G. Seigler

Exhibit 49 1009a
1952 Annual Report of Citizens Federal Savings and
Loan Association to the Home Loan Bank Board
Home Loan Bank Board
and
Cooperating State Department

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6-1-58
SK

ANNUAL REPORT

OF

Citizens Federal Savings and Loan Association
Of Port Huron
(Name of Institution)

511 Water Street Port Huron, Michigan
(Street Address) (City) (State)

AT THE CLOSE OF BUSINESS

December 31, 1952

CERTIFICATION

James P. Sharp President
I, Ann G. Barry Secretary of the Citizens Federal Savings
and Loan Association of Port Huron, do hereby solemnly swear that,
to the best of my knowledge and belief: The books and records of said asso-
ciation correctly reflect the true financial condition thereof, the state-
ments, schedules and data contained herein are true and correct, the signa-
tures appearing on all notes, mortgages and other instruments in connection
therewith are genuine; and there are no undisclosed assets or liabilities.

James P. Sharp President
Ann G. Barry Secretary

Subscribed and sworn to before
me this 7th day of January
1953.

(SEAL OF ASSOCIATION)

John E. Burgenot
John E. Burgenot
(NOTARIAL SEAL)

NOTE: State-chartered associations that are required to use a different form of Certifica-
tion may substitute the required form for the foregoing one.

1952 Annual Report of Citizens Federal Savings and Loan Association to the Home Loan Bank Board

FIRST MORTGAGE LOANS

Schedule 1

If institution holds both the first and second mortgage on the same property, both should be included as a first mortgage.

A. First Mortgages Direct Reduction Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*	1781	\$ 1,152,407.92
2. Other improved real estate	17	127,130.12
3. Unimproved real estate		
Total	1798	\$ 1,279,538.04 (1)

B. First Mortgages Share Account Savings Fund Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*		\$
2. Other improved real estate		\$
3. Unimproved real estate		\$
Total		\$ (1)

C. First Mortgages Straight Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*		\$
2. Other improved real estate		\$
Unimproved real estate		\$
Total		\$ (1)

D. Loans In Progress

Total amount disbursed on loans on 1-4 family properties \$ 81,744.71

E. Loans Serviced for Others

Unpaid balances of mortgages which the institution has contracted to service for others \$ 772,504.92

* Includes joint loans and mortgages not to exceed 4 family.

** Unpaid principal* means the face value of the mortgage, minus any credits thereto, including the principal value of installment mortgage loan shares.

(1) Total "Unpaid Principal" must agree with corresponding item (1), (2), or (3) of Exhibit A, less (a) interest or advance included therein, and loan mortgage loan shares (item 21, Exhibit A) pledged to share account showing Fund Loans (item 3-b, Exhibit A).

ANALYSIS OF FIRST MORTGAGE LOANS MADE DURING THE PAST YEAR

Schedule 2

If institution holds both a first and second mortgage on the same property, both should be included as a first mortgage loan.

	CONSTRUCTION	PURCHASE OF OTHERS	REFINANCING*	OTHER PURPOSES	TOTALS
Number	171	100	10	271	552
Amount	\$ 1,152,407.92	\$ 1,071,185.02	\$ 146,527.11	\$ 578,016.52	\$ 2,948,136.57

* Refinancing loan is a loan to a borrower for the purpose of repaying his mortgage indebtedness to another lender.

MEMBERS' AND INVESTORS' ACCOUNTS

Schedule

	NUMBER HOLDERS	TOTAL OF SUCH ACCOUNTS
(a) Members' and/or investors' accounts with aggregate balances of \$10,000 or less	8195	\$ 6,651,914.94
(b) Members' and/or investors' accounts with aggregate balances of over \$10,000 (total of these accounts).	56	56.00 .. 117,290.87
Total (Amount should equal total of items 20, 21, and 22 of Exhibit A)	8251	\$ 6,776,205.81

First Federal Savings & Loan Assn.

CORNER OF W. HEARLEY AT BEACH STREET

Statement of Condition

DECEMBER 31st, 1947

ASSETS

First Mortgage	\$1,445,179.47
Loans on Pass Books	11,255.47
Properties Held on Contract	223,662.71
Investments and Securities	230.00
Cash on Hand and in Banks	57.00
Other Building and E. Interest	2.00
(Less Depreciation)	100.00
Other Assets	100.00
Total Assets	\$1,743,953.29

LIABILITIES

Members' Share Accounts	\$1,577,400.00
Advances from Federal Home Loan Bank	145,000.00
Loans in Process	17,005.11
Other Liabilities	4,100.00
Shareholders' Reserves	7,917.00
Unpaid Reserves	1,400.00
Less First Profits	22,000.00
Total Liabilities	\$1,743,953.29

Our progress as of December 31, of each year is shown in the following tabulation:

	Assets
1940	\$ 642,753.35
1941	991,657.66
1942	1,097,482.80
1943	1,252,569.77
1944	1,554,918.00
1945	2,245,991.00
1946	2,974,678.13
1947	2,243,953.29

OFFICERS AND DIRECTORS

C. M. SPOWNSON	President
PERCY A. JOFF	Vice-President
ROLAND E. PARKER	Executive Vice-President
GEO. C. KELLAN	Secretary
WM. A. WEATHERCUT	Treas. and Attorney
GORDON H. MASON	Auditor
ALBERT ARPAID	
WM. S. BALLENGER, JR.	
FRANK L. McAVINCHY	
DR. HARRY MOGFORD	
H. T. V. PERRY	

FIRST FEDERAL

1952 Annual Report of First Federal Savings and Loan
 Association of Flint to Home Loan Bank Board
 and
 Cooperating State Department

ANNUAL REPORT

First Federal Savings and Loan
 (Name of Institution)

Shelby County, Michigan Flint
 (Street Address) (City) (State)

~~Exhibit 56~~

AT THE CLOSE OF BUSINESS

December 31, 1952

CERTIFICATION

I, KE Parker President
First Federal Savings and Loan Association of Flint Secretary of the First Federal Savings and Loan Association of Flint, do hereby solemnly swear that, to the best of my knowledge and belief, the books and records of said association correctly reflect the true financial condition thereof; the statements, schedules and data contained herein are true and correct; the signatures appearing on all notes, mortgages and other instruments in connection therewith are genuine; and there are no undisclosed assets or liabilities.

(KE Parker) President

Subscribed and sworn to before
 on this 27th day of January
 1953.

I certify that this is a true and correct
 and true copy of the original
 FIRST FEDERAL SAVINGS AND
 LOAN ASSOCIATION OF FLINT
[Signature]
 A. B. Smith, Secretary

1952 Annual Report of First Federal Savings and Loan Association of Flint to Home Loan Bank Board

(If institution made both a first and second mortgage on the same property, both should be included as a first mortgage loan.)

A. First Mortgage Direct Reduction Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*	127	1,783,727.67
2. Other improved real estate		1,124.00
3. Unimproved real estate		
Total	127	1,784,851.67 (1)

B. First Mortgage Share Accounts Savings Fund Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*		
2. Other improved real estate		
3. Unimproved real estate		
Total		

C. First Mortgage Straight Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*	13	16,225.00
2. Other improved real estate		
3. Unimproved real estate		
Total	13	16,225.00 (1)

D. Loans in Progress

Total amount undisbursed on loans on 1-4 family properties

192,172.34

E. Loans Serviced for Others

Unpaid balance of mortgages which the institution has contracted to service for others

212,299.75

27,124.90

239,424.65

* Include joint home and business not to exceed a family.

** "Unpaid principal" means the face value of the mortgage, minus any credits thereto, including the present value of installment mortgage loan shares.

(1) Each total "Unpaid Principal" must agree with corresponding item 1a, 1b, or 1c of Exhibit A, less any interest or advances included therein, and less mortgage loan shares (item 2), Exhibit A) pledged on share account sinking fund loans (item 1-d, Exhibit A).

ANALYSIS OF FIRST MORTGAGE LOANS MADE DURING THE PAST YEAR

Schedule B

(If institution made both a first and second mortgage on the same property, both should be included as a first mortgage loan.)

	CONSTRUCTION	PURCHASE OF HOMES	REFINANCING*	OTHER PURPOSES	TOTALS
Number	109	141	19	45	314
Amount	776,071.14	1,167,604.00	2,250,000.00	1,125,000.00	5,318,675.14

ANALYSIS OF FIRST MORTGAGE LOANS MADE DURING THE PAST YEAR
G. M. Mann, Secretary

Schedule A

MEMBERS' AND INVESTORS' ACCOUNTS

	NUMBER HOLDERS	TOTAL OF SUCH ACCOUNTS
(a) Members' and/or investors' accounts with aggregate balances of \$10,000 or less	607 <u>2919</u> 2919	<u>5,011,227.2</u>
(b) Members' and/or investors' accounts with aggregate balances of over \$10,000 (total of these accounts).	128 <u>1110</u>	<u>1,504,596.4</u>
Total (Amount should equal total of items 20, 21, and 22 of Exhibit A)	3047 <u>3079</u> 71 <u>2947</u>	<u>6,515,823.7</u>

Statement of Condition of
CALHOUN FEDERAL SAVINGS
 and Loan Association

AT CLOSE OF BUSINESS, DECEMBER 31, 1947

ASSETS

First Mortgage Loans	\$5,776,292.49
Share Loans	801.94
Properties Sold on Contract	43,843.21
Real Estate Subject to Redemption	3,087.75
Investments & Securities	1,075,096.00
Cash on Hand & in Banks	390,558.18
Office Bldg. & Equipment Less Depreciation	24,506.33
Deferred Charges & Other Assets	992.51
	<hr/>
	7,243,218.41

LIABILITIES

Members' Savings Share Accounts	\$6,215,190.22
Advances from Federal Home Loan Bank	475,000.00
Loans in Process	48,810.00
Other Liabilities	5,154.72
Specific Reserves	4,549.92
General Reserves & Undivided Profits	494,513.55
	<hr/>
	7,243,218.41

Savings Accounts are insured up to \$5,000.00 each by an agency of the United States Government — The Federal Savings & Loan Insurance Corporation, Washington, D. C.

" WE PAY YOU TO SAVE "

Exhibit 91A

1016a

*Calhoun Savings and Loan Association—Statement of
Condition as of 12/31/52*

**STATEMENT OF CONDITION
AS OF DECEMBER 31, 1952**

Cash on hand and in Banks	\$ 1,055,119.93
Investments and Securities	1,809,562.00
First Mortgage Loans	9,807,234.54
Properties Sold on Contract	11,119.36
Office Bldg. & Equipment Less Depreciation	264,720.16
Deferred Charges & Other Assets	1,894.63
	<hr/>
	\$12,349,650.62

Savings and Loan Association in Calhoun County

LIABILITIES

Savings Accounts	\$10,512,930.98
Advances from Federal Home Loan Bank	500,000.00
Loans in Process	140,745.11
Other Liabilities	4,962.76
Specific Reserves	4,627.19
General Reserves	935,150.98
Surplus	251,233.60
	<hr/>
	\$12,349,650.62

1952 Annual Report of Calhoun Federal Savings and Loan Association

Loan Association to the Home Loan Bank Board

Cooperating Bank Department

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ANNUAL REPORT

OF

Calhoun Federal Savings and Loan Ass'n
(Name of Institution)

(Street Address)	(City)	(State)

AT THE CLOSE OF BUSINESS

December 31, 1952

CERTIFICATION

I, _____ President
Secretary of the _____, do hereby solemnly swear that, to the best of my knowledge and belief: The books and records of said association correctly reflect the true financial condition thereof; the statements, schedules and data contained herein are true and correct; the signatures appearing on all notes, mortgages and other instruments in connection therewith are genuine; and there are no undisclosed assets or liabilities.

President
Secretary

Subscribed and sworn to before
on this _____ day of _____
19____.

(SEAL OF ASSOCIATION)

Notary Public

(NOTARIAL SEAL)

NOTE: State-chartered associations that are required to use a different form of Certification may substitute the required form for the foregoing one.

1952 Annual Report of Calhoun Federal Savings and Loan Association to the Home Loan Bank Board

FIRST MORTGAGE LOANS

Schedule I

(If institution holds both the first and second mortgage on the same property, both shall be included as a first mortgage.)

A. First Mortgages Direct Reduction Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*	<u>3724</u>	<u>\$ 2,007,782</u>
2. Other improved real estate	<u>12</u>	<u>171,822</u>
3. Unimproved real estate	<u>3042</u>	<u>2,427,285</u>
Total		(1)

B. First Mortgages Share Amortized Savings Fund Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*	<u> </u>	<u> </u>
2. Other improved real estate	<u> </u>	<u> </u>
3. Unimproved real estate	<u> </u>	<u> </u>
Total		(1)

C. First Mortgages Straight Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*	<u> </u>	<u> </u>
2. Other improved real estate	<u> </u>	<u> </u>
3. Unimproved real estate	<u> </u>	<u> </u>
Total		(1)

D. Loans in Progress

Total amount undischarged on loans on 1-4 family properties \$ 1,487,451

E. Loans Serviced for Others

Unpaid balance of mortgages which the institution has contracted to service for others

* Include joint home and business not to exceed 4 family.

** "Unpaid principal" means the face value of the mortgage, minus any credits thereto, including the present value of installment mortgage loan charges.

(1) Each total "Unpaid Principal" must agree with corresponding item 1a, 1b, or 1c of Exhibit A, less any interest or advances included therein, and less mortgage loan charges (Item 21, Exhibit A) pledged on share account sinking fund loans (Item 1-5, Exhibit A).

ANALYSIS OF FIRST MORTGAGE LOANS MADE DURING THE PAST YEAR

Schedule 2

(If institution holds both a first and second mortgage on the same property, both should be included as a first mortgage loan.)

	CONSTRUCTION	PURCHASE OF MORTGAGES	REFINANCING*	OTHER PURCHASES	TOTALS
Number	<u>48</u>	<u>157</u>	<u>-1-</u>	<u>521</u>	<u>726</u>
Amount	<u>\$ 261,102.20</u>	<u>742,275-</u>	<u>-2-</u>	<u>1,227,161-</u>	<u>\$ 2,230,538-</u>

* Refinancing held to a loan to a borrower for the purpose of repaying his mortgage indebtedness to another lender.

MEMBERS' AND INVESTORS' ACCOUNTS

Schedule

	<u>NUMBER HOLDERS</u>	<u>TOTAL OF SUCH ACCOUNTS</u>
(a) Members' and/or investors' accounts with aggregate balances of \$10,000 or less	<u>7973</u>	<u>\$ 9,011,512.11</u>
(b) Members' and/or investors' accounts with aggregate balances of over \$10,000 (total of these accounts).	<u>112</u>	<u>1,571,418.37</u>
Total (Amount should equal total of items 20, 21, and 22 of Exhibit A)	<u>8085</u>	<u>\$ 10,582,930.48</u>

EXHIBITS 65A-F

**Recapitulation of Real Estate Mortgages Recorded in
Calhoun, Genesee, Ingham, Kent, Saginaw and St. Clair
Counties during 1952**

(Exhibit 65A, page 1)

Mortgagee	No. of Mortgages	Amount
Michigan National Bank	2,934	\$ 23,089,907.33
All other banks and trust companies	8,865	50,585,469.43
Building and/or savings and loan associations	6,498	35,575,546.27
Insurance companies	1,287	14,338,355.54
Credit unions	172	705,267.24
Other corporations	1,666	13,823,573.95
Individuals	2,704	12,448,926.34
Total—All Counties	24,126	\$150,567,046.10

Real Estate Mortgage Recordings by County in 1952

Calhoun

(Exhibit 65A, page 2)

Michigan National Bank	599	\$3,563,215.49
All other banks and Trust companies	338	2,070,799.20
Building and/or savings and loan associations	1,355	5,655,375.13
Insurance companies	101	1,120,500.00
Credit unions	1	15,192.00
Other corporations	258	2,114,011.50
Individuals	364	2,107,198.37
Total—Calhoun	3,016	\$16,646,291.69

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*Exhibits 65A-F**Real Estate Mortgage Recordings by County in 1952*

County	Mortgagee	No. of Mortgages	Amount
Genesee			
(Exhibit 65B, page 66)			
Michigan National Bank		505	\$ 3,591,185.63
All other banks and trust companies		3,932	21,590,057.63
Building and/or savings and loan associations		678	4,154,887.27
Insurance companies		203	1,485,155.00
Credit unions		15	60,548.84
Other corporations		475	3,310,767.20
Individuals			1,694,885.84
Total—Genesee		<u>6,225</u>	<u>\$35,887,487.41</u>
Ingham			
(Exhibit 65C, page 209)			
Michigan National Bank		351	\$ 4,320,815.00
All other banks and trust companies		1,051	5,675,811.21
Building and/or savings and loan associations		859	5,256,121.12
Insurance companies		311	4,144,296.62
Credit unions		72	281,808.05
Other corporations		342	3,366,271.66
Individuals		508	2,471,404.40
Total—Ingham		<u>3,494</u>	<u>\$25,516,528.06</u>

Exhibits 65A-F

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Real Estate Mortgage Recordings by County in 1952

County	Mortgagee	No. of Mortgages	Amount
Kent			
(Exhibit 65D, page 292)			
Michigan National Bank		589	\$ 5,409,112.17
All other banks and trust companies		1,866	12,636,990.36
Building and/or savings and loan associations		1,474	9,383,370.12
Insurance companies		521	6,256,625.00
Credit unions		64	267,722.03
Other corporations		512	4,313,320.74
Individuals		848	3,591,160.58
Total—Kent		5,874	\$41,858,301.00

St. Clair

(Exhibit 65E, page 502)

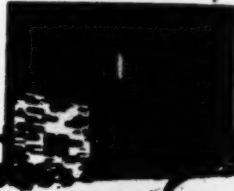
Michigan National Bank	503	\$ 3,159,161.95
All other banks and trust companies	789	3,912,714.78
Building and/or savings and loan associations	620	3,038,242.21
Insurance companies	30	197,800.00
Credit unions	15	61,931.32
Other corporations	10	56,708.00
Individuals	254	1,078,321.79
Total—St. Clair	2,221	\$11,504,880.05

*Real Estate Mortgage Recordings by County in 1952***Saginaw**

(Exhibit 65F, page 425)

Michigan National Bank	387	\$ 3,046,417.09
All other banks and trust companies	889	4,699,096.25
Building and/or savings and loan associations	1,512	8,087,550.42
Insurance companies	121	1,133,978.92
Credit unions	5	18,065.00
Other corporations	69	662,494.85
Individuals	313	1,505,955.36
Total—Saginaw	3,296	\$19,153,557.89

ROBERT L. CARLSON
Executive Vice President


Saginaw Savings

AND LOAN ASSOCIATION

TELEPHONE PL 5-8571

May 20, 1958

I hereby certify that the attached
copy of the By-Laws of the Saginaw Savings and
Loan Association is a true copy of the By-Laws
which were in effect in 1952.

Emilia E. Carlson

Emilia E. Carlson

Treasurer-Assistant Secretary

1952 By-Laws of Saginaw Savings and Loan Association
BY-LAWS

of the

SAGINAW SAVINGS AND LOAN ASSOCIATION

Saginaw, Michigan

ARTICLE I.

Name

This Association shall be known as the SAGINAW SAVINGS AND LOAN ASSOCIATION, SAGINAW, MICHIGAN, with its principal office located in the City of Saginaw, Saginaw County, Michigan.

ARTICLE II.

Object of This Association

The object of this Association is to conduct such business as authorized by Act No. 50 of the Public Acts of 1887, as amended, and such amendments thereto as may be adopted from time to time.

ARTICLE III.

Capital Stock

Section 1. The authorized capital stock shall be ten million dollars, and be divided into one hundred thousand shares of the par value of one hundred dollars each.

Section 2. The stock shall be divided into Fully Paid Shares and Optional Savings Shares, which classes of stock may be issued at any time the Board of Directors may determine, as provided by these by-laws and the laws governing this Association.

ARTICLE IV.

Members

Any person may become a member of the Association by subscribing for one or more shares of its stock upon the forms prescribed by the Association and by making payments thereon either in full or in part; except, all borrowers from the Association and all other obligors through such relationship shall become members thereof for the duration of such relationship. The rights and privileges of membership shall be subject to all the by-laws of the Association herein set forth or that may be hereafter adopted, the articles of Association, and the statutes of the State of Michigan, together with all the resolutions of the Board of Directors adopted from time to time which are not inconsistent therewith.

ARTICLE V.

Members' Voting Privilege

Except as otherwise provided by law, at all meetings of members of the Association each shareholding member shall be entitled to cast one vote, in person or by proxy, for each \$100.00, or fraction thereof, standing in his share account as shown by the books of the Association, and each borrowing or otherwise obligated member shall be entitled to one vote.

either in person or by proxy, for each obligation. Membership held in the name of two or more persons shall have no greater voting power than membership held by an individual member.

ARTICLE VI.

Meetings

Section 1. The annual meeting of the members of the Association shall be held at its office in the City of Saginaw, or at such other place designated by the Board of Directors on the 3rd Tuesday in January of each year, at 7 o'clock P. M., Eastern Standard Time; but in the event such day falls on a legal holiday, then said annual meeting shall be held on the next succeeding business day.

Section 2. Special meeting of members may be called at any time by the president; or shall be called upon the written request of a majority of the directors, or whenever ten per cent or more members shall make written request therefor to the secretary. Notice of either the annual meeting or a special meeting and the purposes or purposes thereof shall be given either by mailing such notice by ordinary mail to the last known post office address of the several members as shown by the books of the Association, postmarked at least one week prior to the date of said meeting, or by publishing said notice at least two times before said meeting, the first of said publications to be at least ten days prior to the meeting date, and the second, one week later, in any newspaper published in the English language in the City of Saginaw, Michigan, that has general circulation in the County of Saginaw, Michigan.

Section 3. Any number of members of the Association, including a majority of the Board of Directors, shall constitute a quorum at either the annual meeting or any special meeting.

Section 4. All voting at members' meetings shall be done in person or by proxy.

ARTICLE VII.

Directors - Powers, Duties and Qualifications

Section 1. The Board of Directors shall:

- (a) Have the general management and control of the business and affairs of the Association;
- (b) Prescribe such rules and regulations for the conduct and government of the Association and the members thereof as are not inconsistent with these by-laws or contrary to law;
- (c) Have the power to appoint such various standing and special committees as are necessary in the conduct of the business;
- (d) Fix the salaries or compensation of all officers, directors, agents, and employees of the Association;
- (e) Have the power to borrow such money as may be necessary to transact the business of the Association, in an amount and under the conditions prescribed by the laws of the State of Michigan;
- (f) Have authority to and shall designate one or more depositories for the association's funds. Such designation shall be renewed or changed at least once in each year;
- (g) Have such further powers and duties as are authorized by law.

Section 2. The Board of Directors shall consist of not more than twelve members or less than seven, as specified by resolution of the Board of Directors, who shall hold office until the annual meeting of

annual meeting, not more than four directors shall be elected for a term of one year, not more than four directors shall be elected for a term of two years, and not more than four directors shall be elected for a term of three years; that thereafter the members of the Board shall serve for terms of three years each, or until their successors are elected and qualify, unless they shall have resigned, become disqualified or incapacitated.

Section 3. A majority of the Board shall constitute a quorum for the transaction of business, but a lesser number may convene and take adjournment. No member shall be eligible for election as a Director unless he owns in his individual and separate right on the books of the Association unpledged shares upon which Two Hundred Fifty (\$250.00) Dollars in cash has been paid. Any Director who shall cease to possess the qualifying shares herein set forth shall thereby forfeit his office as such Director, and the same shall become vacant without affirmative action of any sort on the part of the Board of Directors or the members of the Association.

Section 4. Vacancies on the Board of Directors whether caused by death, resignation, or loss of qualifying shares, may be filled by a majority vote of the remaining members of the Board until the next annual meeting of the Association.

ARTICLE VIII.

Directors' Meetings

Section 1. Stated monthly meetings of the Board of Directors for the transaction of general business shall be held on such dates and at such times as shall be fixed by a resolution of the Board of Directors; but in the event said day falls on a legal holiday, then said meeting shall be held on the next succeeding business day, or at such other time as may be agreed, upon in advance by a majority of said Board. Special meetings may be called by the president or the secretary-treasurer whenever in his opinion the business of the Association may require such special meeting.

Section 2. Notice of meetings of directors shall be given by telephoning, delivering or mailing to each director, at least twenty-four hours before the time for the meeting, a notice stating the time, place and purposes of the meeting, unless such notice is waived in writing by all Directors before or after the meeting.

ARTICLE IX.

Officers

Section 1. The officers of the Association shall be a President, one or more Vice-Presidents, a Secretary, a Treasurer and such other officers as the Board of Directors may designate, who shall be elected by the Board at the meeting of the Board of Directors next following the organization or the annual members meeting. Any two of the above offices except those of the President and Vice-President may be held by the same person, but no officer shall execute, acknowledge or verify any instrument in more than one capacity. All officers shall assume their duties not later than the first day of the following month, and shall hold office for one year or until their successors are duly elected and qualified.

Section 2. The Board of Directors may appoint an attorney for the Association, who may or may not be a director of the Association, and an executive Committee consisting of five members, and may also elect a chairman, who shall preside at all meetings of the Board of Directors and shareholders, and may also appoint one or more assistant vice-presidents

likewise may or may not be a member of the Board of Directors and whose duties shall be such as generally pertain to such office. The attorney and the assistant vice-presidents, secretaries and treasurers, if any, shall hold office at the pleasure of the Board of Directors.

ARTICLE X.

President

The president shall preside at all meetings of the members and the Board of Directors, and shall perform such other duties as are usually ascribed to that officer, and such as are required by the by-laws or the resolutions of the Board of Directors.

ARTICLE XI.

Vice-Presidents

In case of the absence or disability of the president, his duties shall be performed by a vice-president.

ARTICLE XII.

Secretary-Treasurer

Section 1. The Secretary shall act as such at all meetings of the Board of Directors and Shareholders, keep the minutes of such meetings and cause them to be entered in a book of records kept for that purpose. He shall have general charge of the accounting of the Association's business, and shall see that such accounts are kept correctly between the Association and its shareholders, borrowers and others. He shall have the custody of all deeds, mortgages and other papers belonging to the Association, and shall see that they are properly safeguarded. He shall also protect the interest of the Association in any property owned by it or in which it may have an insurable interest by proper policies of insurance, and shall also see that the interests of the Association in any real estate are protected from tax liens. He shall furnish each month to the Board of Directors a summarized statement of the financial transactions of the Association for the preceding month, and shall perform such other and further duties as the Board of Directors shall require from time to time.

Section 2. The treasurer shall have custody of and be responsible for all of the monies, securities and funds of the Association. He shall also perform such other duties as may be assigned to him by the Board of Directors.

ARTICLE XIII.

Assistant Officers

Section 1. The assistant vice-president, if appointed by the Board of Directors, shall assist the president or a vice-president in the discharge of his duties and have such other authority as the Board of Directors by proper resolution may prescribe.

Section 2. The assistant secretary and the assistant treasurer, if appointed by the Board of Directors, shall assist the secretary and the treasurer in the discharge of his duties, and have authority on proper resolution of the Board of Directors to execute any instrument requiring the signature or counter-signature of the secretary or the treasurer. He shall act as secretary or treasurer of the Association in his absence.

and perform such duties as the secretary or treasurer or the Board of Directors may prescribe.

ARTICLE XIV.

Attorney

The attorney shall examine all abstracts, title policies, and records relating to the title of real estate offered as security for a loan, certify in writing to the Board of Directors all facts that might in any way affect the interest of the Association in case such security is accepted and perform such other legal services as may be authorized by the Board of Directors or requested by the secretary-treasurer.

ARTICLE XV.

Bonding of Officers and Employees.

A bond or bonds covering all active officers and employees shall be executed in such an amount as the Board of Directors may specify, and as provided by the laws of the State of Michigan.

ARTICLE XVI.

Types of Shares

Section 1. The following types of shares may be issued in the discretion of the Board of Directors:

- (a) Installment savings shares, on which dues shall be paid as may be fixed by the Board of Directors.
- (b) Optional savings shares, on which, after the first payment has been made, the shareholder may pay any amount at any time desired.
- (c) Fully-paid shares, when the full par value thereof is paid at the time of issuance or when the full par value of other types of shares has been paid in thereon, including credited dividends.

Section 2. When payments on installment savings or optional savings shares, together with dividends credited thereto, equal the full par value thereof, such shares shall become fully-paid shares and certificate representing the same shall be exchangeable for membership certificate representing fully-paid shares at the option of the holder thereof without cost. Any holder of installment savings or optional savings shares may at any time pay the difference between the amount paid in thereof, including credited dividends, and the par value thereof, and shall thereupon be entitled to a certificate or passbook representing fully-paid shares.

ARTICLE XVII.

Dividends

As of June 30 and December 31 in each year, and after payment or provision for all expenses and appropriate transfers to reserves, the remainder of the net earnings for the half calendar year shall be transferred to the undivided profits account. At the regular monthly meeting immediately preceding January 1 and July 1 each year the Board of Directors shall declare a dividend payable on January 1 and July 1 of each year, respectively, or if either such date be a legal holiday, then on the next succeeding business day. No dividends shall be declared except dividends payable on said dividend dates. Payments of net earnings to shareholders are dividends and shall not be referred to as interest.

Dividends upon fully-paid shares shall be promptly paid in cash as of the dividend date. Dividends on shares of other classes shall be credited to such share accounts on the books of the Association as of the dividend date unless the Association shall have agreed with the holder of any such shares to pay all or part of the dividends in cash. Dividends payable in cash shall be paid on the dividend payment date and may be paid by check or bank draft. All shareholders shall participate equally in dividends pro rata to paid-in value, plus credited dividends (hereinafter termed "participation value") of their respective share accounts; provided that the Association shall not be required to pay or credit dividends on share accounts of \$5 or less. Except as above provided, dividends shall be declared on the participation value of each share account at the beginning of the dividend period, plus payments thereon made during the dividend period (less amounts withdrawn and noticed for withdrawal, which for dividend purposes shall be deducted from the latest previous payments thereupon) computed at the dividend rate for the time invested, determined as provided below. The date of investment shall be the date of the actual receipt by the Association of a payment on a share account, except that the Board of Directors may fix a date, which shall not be later than the tenth of the month, for determining the date of investment, provided, however, that the Board of Directors may permit investments of \$100 or more to receive dividends from the date of investment in any event. Payments on share accounts, affected by such determination date, received by the Association on or before such determination date, shall receive dividends as if invested on the first of the month during which such payment is made. Payments on share accounts, affected by such determination date, received subsequent to such determination date, shall receive dividends as if invested on the first of the month next succeeding the month during which such payment was made. No preference shall be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding up of the Association.

ARTICLE XVIII.

Insurance of Shares

In the event that the share accumulations of the Association are insured by the Federal Savings and Loan Insurance Corporation and in the event that the Association contemplates taking action to terminate the insurance of share accumulations by the Federal Savings and Loan Insurance Corporation, the regulations of such corporation as they exist shall be adhered to. Notice of such contemplated action shall be furnished to the state supervisory authority.

ARTICLE XIX.

Withdrawal of Shares

Any member desiring to withdraw his unpledged shares, either fully paid, or part paid, in whole or in part, shall have the privilege to do so; provided, the Board of Directors may require thirty days written notice of such intention to withdraw. Such written applications to withdraw shall be numbered and filed in the order received, and after thirty days from the receipt of such application the Association shall either pay the withdrawing member the value of his shares to be withdrawn or shall apply thereon in the manner provided by the statutes of the State of Michigan, and any amendments thereto, the funds of the Association applicable to the payment of withdrawals. The withdrawal value of shares shall be the full amount paid in thereon, including such dividends or earnings as have been credited thereon, less any fines, fees and other charges legally made against such shares and remaining unpaid.

ARTICLE XX.

Assignment of Shares

Section 1. All shares shall be issued and by the acceptance thereof held subject to all provisions of the law of the State of Michigan as now or hereafter amended, the articles of association and by-laws of the Association, and shall be transferable on the books of the Association upon surrender by the holder thereof, in person or by his duly authorized attorney, to the Association of the share certificate properly endorsed. The Association may treat the holder of record of shares as the owner for all purposes, without being affected by any notice to the contrary, until the share certificate is transferred on the books of the Association. Share certificates will not be transferred unless and until the transferee has made proper application for membership in and has been accepted as a member of the Association.

Section 2. The Association shall not charge, directly or indirectly, any membership, admission, repurchase, withdrawal, or any other fee or sum of money for the privilege of becoming or ceasing to be a member of the Association.

ARTICLE XXI.

Earnings, Expense and Reserve

The gross earnings of the Association shall be computed semi-annually on June 30 and December 31 of each year. Expenses shall be paid and reserves accumulated and expended as required by law and as necessary for insurance purposes. Earnings in excess of such reserves may be transferred to other accounts as necessary in the conduct of the Association's business, and the balance shall be transferred to the undivided profit account. Dividends declared by the Board of Directors shall be paid or credited from the undivided profit account only, as heretofore provided.

ARTICLE XXII.

Loans and Conditions

Section 1. Subject to the applicable statutes of the State of Michigan the funds of the Association shall be loaned under the direction of the Board of Directors at such rate of interest and on such other terms and conditions as may be agreed upon between the Board of Directors and the borrowing member.

Section 2. On the filing of a report in writing by the appraisal committee of the Board of Directors, or other appraiser appointed by it, the Board of Directors by resolution may authorize its proper officers to complete loans. Loans so made shall be reported to the Directors at their next meeting. Applications for loans shall be made on forms provided by the Association.

Section 3. If a borrower neglects to offer security satisfactory to the Board of Directors within thirty days after having been notified by mail that his application for a loan has been granted and that the money is available therefor, his right to the loan shall be forfeited, and he may be charged with interest for one month, together with any expense incurred, and the money appropriated for such loan may be reallocated at the next or any subsequent meeting of the Board of Directors.

Section 4: Periodical applications of the payment of a borrower may be made to the direct reduction of his loan at such intervals and in such manner as fixed and determined from time to time by resolution of the Board of Directors and set forth in the borrower's note, bond or other evidence of indebtedness or in the mortgage securing the same.

Section 5. Any borrower desiring to reduce his loan by applying thereon the withdrawal value of shares pledged as security for the loan shall be permitted to do so upon filing a written request for such application of credits in such form as prescribed by the Board of Directors; provided, however, that upon such application of share credits the Association shall not be required to reduce the amount of the regular payments upon the loan as provided in the original contract with the borrower.

ARTICLE XXIII.

Limiting Rights of Directors, Officers or Employees of the Association

No director, officer or employee of the Association shall be granted any real estate loan from the Association or become otherwise indebted to the Association in excess of the number and the amount permitted by law.

ARTICLE XXIV.

Limitation of Members to Borrow

Not more than \$20,000.00 in the aggregate shall be loaned to any member of the Association on the security of real estate except by a resolution of the Board of Directors in each individual case, limiting the number of loans and the total amount thereof.

ARTICLE XXV.

Loans on Shares

Shareholders, at the discretion of the Board of Directors, may obtain loans on their shares without other security as provided by statute. No shareholder shall be permitted a share loan when there are unpaid withdrawal applications on file.

ARTICLE XXVI.

Retiring Shares

The Association by resolution of its Board of Directors may call shares for cancellation at any time on giving thirty days notice thereof to the members whose shares are thus called for cancellation. Such notice shall be directed to the member at his last known place of address, as shown by the Association's records. Upon the cancellation of such shares the member shall present and return to the Association the evidence thereof. All earnings or dividends on shares so called for cancellation shall cease on the expiration of said thirty-day period regardless of whether or not said shares are then presented by the member for cancellation and payment.

ARTICLE XXVII.

Execution of Legal Documents and Disbursements

All contracts, deeds, releases, mortgages, checks, notes and other evidences of indebtedness, and all other instruments to be executed

Exhibit 68

1033a

EXHIBIT 72

(2) Present: Messrs. Butzel, Eaman, Long, Gust & Kennedy, Philip T. Van Zile, Esq., appearing, 1881 National Bank Building, Detroit 26, Michigan, Attorneys for the Plaintiff; William D. Dexter, Esq., Assistant Attorney General, Lansing, Michigan, and Messrs. Dickinson, Wright, Davis, McKean & Cudlip, W. Gerald Warren, Esq., appearing, 800 National Bank Building, Detroit 26, Michigan, Attorneys for the Defendants; Maurice W. Lamson, Esq., 202 First Savings & Loan Association Building, Saginaw, Michigan, Attorney for First Savings & Loan Association.

(4) Saginaw, Michigan,
Friday, December 13, 1957
One-thirty o'clock P.M.

The taking of the Deposition of Mr. James H. Jerome by the Plaintiff in the above-entitled cause, was commenced on Friday, December 13, 1957, at one-thirty o'clock in the afternoon, at the offices of the First Savings & Loan Association, No. 124 S. Jefferson Avenue, Saginaw, Michigan.

(5) Mr. Van Zile: Now, do you want to state on the record any objections you may have, Mr. Dexter?

• Mr. Dexter: Let the record show that the defendants object to the whole line of the testimony to be obtained from the deposition of Mr. Jerome, as being immaterial and irrelevant to this matter.

1036a Exhibit 72—Deposition of James H. Jerome
Direct Examination

I think it is also fair to state that it is agreeable with counsel that this objection will obtain throughout this whole deposition, without repeating it after any particular question.

Mr. Van Zile: I agree to that; and I will also reserve a general objection to any questions that Mr. Dexter may put to Mr. Jerome.

Mr. Dexter: O. K.

(6) JEROME, JAMES H., was thereupon called as a witness by the Plaintiff herein, and after having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Mr. Jerome, will you state your full name, please?

A. James H. Jerome.

Q. Where do you live?

A. I live at 77 Benton Road, Saginaw, Michigan.

Q. By whom are you employed, Mr. Jerome?

A. I am employed by the First Savings & Loan Association, of Saginaw, Michigan.

Q. In what capacity?

A. In the capacity of Executive vice President.

Q. How long have you served in that capacity, Mr. Jerome?

A. Well, I will have to check that; it has been so long ago that I have about forgotten.

Mr. Van Zile: Let the record show that according to the Secretary of State's report for the fiscal year ended June 30, 1950, Mr. Jerome was listed as an

Exhibit 72—Deposition of James H. Jerome 1037a
Direct Examination

Executive Vice President; and, in prior years, the report of June 30, 1949, he was listed as Secretary-Treasurer.

(7) A. Yes; I had 1951 in mind, but I was not sure.

Q. (By Mr. Van Zile, continuing): Some time between 1949 and 1950, your capacity changed from Secretary-Treasurer to Executive Vice President?

A. Yes, sir. (After referring to a memorandum brought into the deposition room): It was 1950.

Mr. Van Zile: 1950?

A. Yes.

Q. (By Mr. Van Zile, continuing): Prior to 1950, you acted as Secretary and Treasurer, and active manager of the institution, is that correct?

A. That is correct.

Q. How long have you been employed by the Association in any capacity, Mr. Jerome?

A. You mean full time?

Q. Or, part time?

A. Well, it goes clear back to say 1900, when I was in my school years, when I did little odd jobs around here.

Q. When were you employed first at full time?

A. Well, full time was in 1926.

Q. Have you been engaged in any other business in the Saginaw area, Mr. Jerome?

A. No, sir.

Q. So that, at the present time, you are engaged solely as the (8) active manager, and Executive Vice President of the Association?

A. That is correct.

Q. Now, through your position and general business background in this area, are you familiar with

1038a Exhibit 72—Deposition of James H. Jerome
Direct Examination

the methods used in this area in the financing or mortgaging of real estate, and building transactions?

A. Generally speaking, yes.

Q. Where is your Association located, Mr. Jerome?

A. At the corner of Jefferson and Federal, Saginaw, Michigan.

Q. At this point, Mr. Jerome, I would like to say that all of my questions are directed to the year 1952, or prior thereto; and we are not concerned with what has happened since 1952.

A. Yes.

Q. Was your Association located where you stated, in 1952?

A. Yes, sir.

Q. Did you have branches in 1952?

A. No, sir.

Q. How long has it been located in its present location?

A. 1931.

Q. In what general area does your Association do business? By that, I mean what is the general location of your shareholders?

A. The greater or major portion is in this immediate Greater Saginaw area.

Q. What do you mean by the "Greater Saginaw Area",—just generally?

(9) A. Oh, we think of Frankenmuth, Saint Charles, Freeland, and Bridgeport as the Greater Saginaw Area; but, of course, there is some sloughing off.

Q. Does it include Bay City?

A. We do not consider that as a portion of the Area, although we have some accounts in Bay City; but, we do not have any mortgage business in Bay City.

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Direct Examination

Q. So, the general area is the Greater Saginaw Area, as you describe it?

A. Yes.

Q. That is, it is the general location of the majority of your shareholders?

A. That is correct.

Q. Is it also the general location of your borrowers?

A. Yes.

Q. Your Association is organized under the State law, is that correct?

A. That is correct.

.

(10) Mr. Dexter: I wonder if I could state on the record now that defendant's objection as to irrelevancy and immateriality also extends to the exhibits?

(11) Mr. Van Zile: Yes; that is understood.

Mr. Dexter: All right.

Q. (By Mr. Van Zile, continuing): Would you state for the record, Mr. Jerome, what this exhibit is?

A. This (indicating) is the By-Laws of the First Savings & Loan Association as they were in effect on July 1, 1952.

Q. Can you tell me whether they remained the same during the balance of the year 1952—do you recall?

A. I believe that they did.

Q. These are the By-Laws under which the Association operated in 1952?

A. That is correct.

.

Q. (By Mr. Van Zile, continuing): I will ask you, Mr. Jerome, to please identify Plaintiff's Exhibit No. 2. Just tell us what that is, for the record (handing the exhibit to the witness).

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Direct Examination

A. This (indicating) is a savings account book, the customer's record of the savings account.

(12) Q. Is this the type of pass book you were using in 1952?

A. Well, substantially, yes. There may be a difference in the type of modeling.

Q. But this is substantially the same as it was in 1952?

A. Yes.

Q. Passing to the capital structure of the Association, would you state for the record in general how your Association obtains its capital?

A. Well, the capital is a requirement of the State law, and is obtained by the purchase of authorized capital stock, authorized by the State Department of Michigan.

Q. Is it true that the bulk of your capital comes from those who invest in your shares? Is that a fair statement?

A. Yes; it in turn is converted actually on the inception of the savings account into a representation of the investor's interest in the Association.

Q. Now, this being a State Association, Mr. Jerome, and it being the first such association we have had a chance to discuss, would you explain for the record the type of shareholders you have in a State association?

A. That we actually have, or are authorized to have?

Q. Well, actually have?

A. We have optional savings shareholders.

Q. Now, I think that—

(13) A. (Interposing): Now, wait a minute.

Q. I think I can help you.

A. I am thinking of what is currently being issued.

Exhibit 72—Deposition of James H. Jerome 1041a
Direct Examination

Q. Yes. Let me put it to you in this way. In the Secretary of State's office, there is a report for the fiscal year ended June 30, 1952, which includes a report of the First Savings & Loan Association, and you list under liabilities, optional savings shares?

A. Yes.

Q. Advance payment shares?

A. Yes.

Q. And fully paid shares?

A. Yes.

Q. Now, would you explain for the record what is meant by an optional savings share?

A. Well, an optional savings share differentiates itself from a Federal type of share accounts, which are bonus shares, and does not require a specific monthly savings account, and the amount is optional with the investors; that is, he can open the account, and then never add to it, or, he can add to it, as he wishes; that is his option; and that is the reason for the use of that identification.

Q. Is it similar to the share account in a Federal Savings & Loan Association?

(14) A. Yes. I do not know the exact nomenclature of it; but the other share, well, I don't recall it even, but basically few of them use the outside bonus type of account, but it is the same.

Q. Well, all right. Now, what is meant by the term "Advance payment shares"?

A. Well, advance payment shares is a type of issue that has not been issued since 1926, but that was a bonus type of account, where the man paid seventy-five dollars for each unit of his certificate; and then if he left it until an increment matured it to one hundred dollars, he got the one hundred dollars; but, if he withdrew it prior to that time, he sacrificed what-

1042a Exhibit 72—Deposition of James H. Jerome
Direct Examination

ever increment there was; and that was the advance payment shares; but, they have not been issued since 1926.

Q. Then what is meant by the term "Fully paid shares"?

A. Fully paid shares are, and I may be a little off in my dating, but at the time of the insurance of our accounts, our fully paid shares were entirely re-drafted to conform with the Federal Savings and Loan insurance requirements, and they contained the same identical condition that the optional savings shares contained.

Now, prior to that time, the fully paid shares contained conditions that limited the maximum amount of earnings, but, other than those conditions, generally they were the same as the savings account, but there was a stated maximum limit of (15) earnings in them.

The other difference was that at that time those earnings were paid by check every six months; and the others were accrued and compounded, in the optional savings.

The further conditions were similar in detail, but I believe of no importance in anything that you would be concerned about.

Q. You have used the term "shares." Does that indicate that this investment by the shareholders was in the nature of a stock investment in the institution?

A. I don't think so, no; I do not interpret it that way.

Q. Then would you describe what you mean by that?

A. The basis for it is the law which sets it up that way, but in actuality, and in the opinion of, probably the majority of the public, they think of it, as we think of it, as a savings account.

Exhibit 72—Deposition of James H. Jerome 1043a
Direct Examination

Q. So, what would you liken it to? I mean in the commercial field what is it most like?

A. Well, it would be an absolute debtor-creditor relationship, both, a savings account—

Q. That is, in commercial banking?

A. Yes.

Q. Now, how are those shares, so-called, represented; they are not represented by a stock certificate, but how are they (16) represented? Are they represented by this pass book?

A. Oh, yes, sir, it is set forth in the pass book; the certificate is right there, in the cover (indicating).

Q. In other words, Plaintiff's Exhibit 2 is what represents their share interest in the Association?

A. That is right.

Q. How much must be deposited to open an account in your Association? Do you have a minimum, ~~or a~~ maximum, or anything of that kind?

A. We have a minimum of a dollar.

Q. Do you have any maximum of the amount that you will accept for deposit?

A. No.

Q. Is there any—

A. (Interrupting): Oh, for the record might I correct that?

Q. Yes.

A. We do not accept deposits. We have a lot of our customers who say that, but when we answer the question, why, we don't use the word "deposits."

Q. I realize that, and I did not use the word intentionally.

Now, what rights does the shareholder have in the Association, generally.

A. Well, he has all of the rights set forth in the By-Laws, of course. He has a voting right at the an-

1044a Exhibit 72—Deposition of James H. Jerome
Direct Examination

nual meeting, he has (17) the right to be present. He has the right of withdrawal. He has the right of borrowing of his ability. He has the right of presenting his investment as collateral to the Association, for an advance, in the nature of a loan with that as collateral.

I guess that covers pretty much the field.

Q. Incidentally, does he have to deposit in certain specified amounts of one hundred dollars, or two hundred dollars; is there any restriction like that?

A. His investment, as far as optional savings are concerned, is not detailed in any dollar amount. We do have fully paid certificates which are in the nature of a required minimum of one hundred dollars, and multiples thereof.

Q. You are required, I take it, by State law, to publish an annual report, is that correct?

A. A financial statement.

Q. Yes, a financial statement.

A. Yes.

Q. And, to report to the state—

A. (Interrupting): Monthly.

Q. Is it monthly?

A. Yes, sir.

Q. Then, you also do you not, send on a report that is incorporated in the Secretary of State's Building and Loan (18) and Savings and Loan Associations report?

A. Yes, we have the annual report.

Q. And your fiscal year ends on June 30—

A. (Interrupting): That is right.

Q. Of each year?

A. That is right.

Q. Do you have your published annual report for the year of 1952?

Exhibit 72—Deposition of James H. Jerome 1045a
Direct Examination

A. Yes.

Q. (By Mr. Van Zile, continuing): Will you identify Plaintiff's Exhibit 3, please, Mr. Jerome?

A. It is the financial statement of the First Savings & Loan Association, of Saginaw, Michigan, for the year ending December 31—for the calendar year ending December 31, 1952.

(19) Q. And this correctly represents the status of the institution on that date?

A. Yes, sir.

Q. Is that correct?

A. To the best of my knowledge and belief, yes, sir.

Q. On that score, while we are on that point, you do report to the State as of June 30 of each year, at the end of your fiscal year?

A. Yes.

Q. And those reports, as I have said, are incorporated in the Secretary of State's report on all savings and loan associations?

A. Yes, sir.

Q. That is, state savings and building and loan associations?

A. Yes, sir.

Q. Does the State audit your books?

A. The State and the Federal Savings and Loan.

Q. How often do they conduct that examination?

A. Well, basically it is once a year, although they may slip over a calendar year, and they may back in ahead of that, that is to say, kind of stretch it out a little bit.

Q. What I am driving at is, is your June 30 statement audited, that is, the one that you send in to the Secretary of State?

1046a Exhibit 72—Deposition of James H. Jerome
Direct Examination

A. I would say no, but I don't know their procedure, but they audit (20) as of the day they arrive.

Q. But, it is required that you make a correct report as of June 30?

A. We have to make a report as of June 30.

Q. What conditions, if any, are there on a shareholder withdrawing this deposit?

A. Do you speak of the practice, or the legal—

Q. I want to know the practice, because the law we know, of course.

A. The practice is that we have always paid on request, except for the time of the bank holiday, at which time we did ~~go on~~ notice as provided by Michigan law, and continued on that until we worked on out of it.

Q. Now, you pay from time to time a dividend on your shares, is that correct?

A. That is correct.

Q. Will you tell us something about that, that is, how it is determined, and who determined it, and so forth?

A. The dividend, of course, is a resulting factor of earnings, after we have paid for our operating expenses, set up the reserve requirements, as set by law, and as determined by the Board, and the remainder of our earnings are all disbursed to the investors.

Q. And that is determined by your Board of Directors, is that right?

(21) A. The dividend rate is determined by the Board of Directors, after hearing the requirements of the reserve and the operating overhead.

Q. When that dividend is paid, how is it paid? Is it paid in the form of a check sent to the shareholder, or is it credited to his account, or, what is the procedure?

A. Both.

Exhibit 72—Deposition of James H. Jerome 1047a
Direct Examination

Q. Both?

A. Yes.

Q. Does that difference depend on the type of share he has?

A. Well, yes and no.

Q. You go ahead and explain it?

A. We have our investment certificates, all of which are paid by check, and paid every six months.

Q. Is that the ones in multiples of—

A. (Interrupting): Of one hundred dollars. They have the right to either have their dividends accrue, or request that a check be mailed to them for it, whichever they wish. Those are in the same book, they simply indicate whether they wish the dividend mailed in the form of a check, or whether they wish it to accrue.

Q. Can you tell us what the dividend rate was in 1952? Do you recall?

A. Two and a half per cent per annum.

Q. Per annum?

(22) A. Yes.

Q. Now, I would like to talk a bit about the class of shareholder that deals with your institution. You have already described geographically where the shareholders come from, that is, the majority of them.

A. Yes, sir.

Q. Do you deal with any particular economic class of person? I mean, is there any particular group, economically, that invests in your Association?

A. No, sir; just the guy that has got some money to save.

Mr. Lamson: Is this helpful to the taxing situation?

Mr. Van Zile: It happens to be.

Mr. Lamson: I do not recognize it as such.

1048a Exhibit 72—Deposition of James H. Jerome
Direct Examination

Mr. Van Zile: Under the Supreme Court decisions, they think it is helpful. I do not know whether it is, or not.

Q. (By Mr. Van Zile, continuing): I mean, is there any general classification?

A. No.

Q. Do you deal particularly with the borrowing class, as opposed to the wealthier class of investors?

A. Well, that does not come from our direction; it comes from their direction. In other words, a man of a wealthy nature is (23) probably in the stock market, and not in a savings account. So, naturally, we pull the great ratio of our money from those people who are of a thrifty habit and are trying to accumulate. Oh, there are many investors who are wealthy people, who may have—well we have got one individual here who has got his money here for the sole purpose of meeting his inheritance taxes, and he is not a poor man by a long ways. But, there is no direction on our part which attempts solicitation from any specific group of people.

Q. Well, I would like to ask your own reaction to this statement. Do you know a Mr. Norman Strunk, who is Executive Vice President of the United States Savings and Loan League?

A. Yes.

Q. He wrote an article which appeared in the Burroughs Clearing House, April, 1954, "The Savings and Loan Group's Remarkable Growth Story," and he made this statement at page 35:

(Reading):

"Savings and loan associations in recent years have acted singly and as a group with the conviction

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Direct Examination

that the American middle class dominates the nation's economy. This, in part at least, is a dream of our forefathers come true. Accordingly, we have equipped ourselves on a nationwide basis to serve Mr. Middle Class."

—and by that he meant the Savings and Loan Associations (24) generally—

(Reading):

"On a nationwide basis to serve Mr. Middle Class. To us he is king and our institutions exist largely to serve him."

Is that your experience in Saginaw?

A. Well, I would say that the actual result of our operation is a much broader group of people in the middle class, than it would be in any other designated class; but, that does not come necessarily from any designed purpose.

Mr. Lamson: Are we confusing two issues? You are talking only about one place, and the middle class you would say is our borrowing public, merely restricted to the group that would be served—

Mr. Van Zile (interposing): At the present time I am talking about the savings end, primarily.

Mr. Lamson: I am wondering if Mr. Strunk is not making his statement in respect to the borrowing class.

Mr. Van Zile: He says both the borrowing and savings classes in this particular article, and I just wondered what Mr. Jerome's reaction was to it, as far as—

A. (Interposing): If you were to ask me if we are to limit our investment to the middle class only, I would have answered you on that, and it is—

(25) Q. In other words, it is broader than that?

A. Oh, yes.

1050a Exhibit 72—Deposition of James H. Jerome
Direct Examination

Q. Your institution is governed by a Board of Directors, I take it?

A. Yes, sir.

Q. Are they elected by the shareholders?

A. Yes.

Q. How do you determine the number of votes that a shareholder has; is it proportionate to his amount of savings?

A. Under our law, a borrowing member has one vote, as you are probably familiar with it, an investing member, so far as this Association is concerned, he has one vote for every hundred dollars of accumulated money. Now, he can vote either in person, or by proxy.

Q. You have, I take it, an annual meeting, at which the Directors are elected?

A. Yes, sir.

Q. Is that right?

A. That is correct.

Q. Is that the way it operates?

A. Yes, sir.

Q. What, in general, are the duties of your directors?

A. The directors, in general, are to set up the operating policies under which management shall work, and to review the procedures and see that we are in conformance with their (26) policies. Further than that, in our institution, our Board of Directors serve, along with the Executive officer, as our Loan Committee; that is, not all of the Board, but a group, that is, a number of the members of the Board.

Q. And that, in general, is a description of the duties of your directors?

A. In general, yes. I think that covers the most of it.

Exhibit 72—Deposition of James H. Jerome 1051a
Direct Examination

Mr. Lamson: Yes.

Q. (By Mr. Van Zile, continuing): I take it that in order to borrow, a person has to be a member of your Association?

A. That is correct.

Q. Would you tell us, in a general way, Mr. Jerome, what the procedure is when a person wants to borrow from you?

A. The routine, you mean?

Q. Yes, what is the routine?

A. Of course, there is an interview to determine—

Q. (Interposing); Who conducts the interview?

A. The applicant will be interviewed by any one of four or five designated and trained people; and, upon interview and determination, that the request is possible from purely a verbal description, an application is taken, in which we obtain a description of the property. We obtain the financial information relative to the individual, that is pertinent to loan considerations.

(27) It is then sent in for a credit report from the Credit Bureau, as to his standing. We review his obligations, his pledged obligations, to find out whether he is biting off more than he can chew, or not. Then it is presented to our Loan Committee, after our inspector has made a visual inspection of the property, and the interior, if he can get in.

The Loan Committee then approves the loan, and at that point it starts into the routine, the preparing of the papers for title examination, and approval of that, and then there is the closing of the loan, by a loaning officer, and the disbursement of the money for the purposes required in the application.

Q. Could you describe for us generally again the type of loan that your institution makes?

1052a Exhibit 72—Deposition of James H. Jerome
Direct Examination

A. Well, the great bulk of our mortgage loans fall very much into three categories:

Home purchase; home construction; home improvements; and then there are, of course, a group that are using an existing home for the personal use of money; they may have particular bills to pay, or they may want money for investment purposes. Now, we would not question those purposes, if the collateral to the underwriting indicated that they were capable borrowers. But, the majority of it is for home purchase, and home improvement.

(28) Q. I take it that a person when he comes to you for such a loan need not be a member, but when he wants to make the loan, he has to become a member?

A. Yes.

Q. Is that correct?

A. That is correct.

Q. Would you describe, Mr. Jerome, how that is handled? Does he have to subscribe for shares, for in advance?

A. No.

Q. As a condition of his loan?

A. No, not under the Michigan law.

Q. But, under your practice?

A. That is right.

Q. Is that right?

A. Yes.

Q. Does he have a particular type of book which is different from this one (indicating)?

A. Oh, we do not use a book.

Q. I see.

A. We use the billing system. Oh, wait a minute; I want to amend that.

Q. Yes.

Exhibit 72—Deposition of James H. Jerome 1053a
Direct Examination

A. In 1952 we did use the book, I believe; but we have not currently for some time.

(29) Q. In other words, or, in any event, if you used a book in 1952, what would that book show, the amount of the borrowing?

A. The balance due.

Q. That is, the balance due, and the payments made?

A. Yes.

Q. Is that correct?

A. Yes, and any charge for taxes and insurance.

Q. What types of collateral do you take for those loans?

A. The only collateral we take and have ever taken is first mortgage paper.

Q. And that is a first mortgage on the borrower's real estate?

A. Yes.

Q. Is that right?

A. Yes, and generally in the great bulk of cases, it is all residential property. We have an isolated one, once in a while, that is, maybe some neighborhood store, or something of that kind, where the owner lives in the adjoining property.

Q. I suppose this would be hard to do, but could you give any estimate of the percentage of your loans that were residential, as opposed to the others, in 1952?

A. Oh, it would be way into ninety per cent. We practically make no loans other than residential loans.

Q. Again referring to these loans in 1952, can you give us a general statement as to what the rate of interest was?

(30) A. Generally, the great majority of them were at five per cent at that time. Now, of course, that eliminates the FHA and GI loans, which are under statutory requirements.

1054a Exhibit 72—Deposition of James H. Jerome
Direct Examination

Q. Could you give us some description of what the duration of those loans was, that is, the term of those loans?

A. As they were legally for, or as history shows them to be?

Q. Both ways?

A. Basically, and this is mainly in 1952, our maximum loan was for sixteen years; but the majority of them were for almost eleven and a fraction years.

Q. How did that happen? Can you explain that?

A. It was simply the Board's policy.

Q. By "Board," you mean what board?

A. Our Board. We had difficulty in getting them to think in terms of twenty years at that time.

Q. Could you describe generally what the nature of the mortgage loan was, in terms of the repayment? How was it repaid?

A. Monthly.

Q. On a monthly basis?

A. Yes; principal and interest. I can further state that we then began a tax escrow system also; and quite a number of them did include tax escrow, as today the majority of them do.

Q. What is this "tax escrow"?

A. Well, the man pays in his monthly payments, one-twelfth of his (31) estimated taxes, and when they come due, we pay them.

Q. Speaking again of loans, and disregarding GI and FHA loans, did you have a policy on how much you would loan against the appraised value of the real estate?

A. Well, we are, of course, restricted by law to seventy-five per cent.

Q. And that was true in 1952?

A. Yes; of the Committee's appraisal.

Exhibit 72—Deposition of James H. Jerome 1055a
Direct Examination

Q. Now, Mr. Jerome—

A. (Interposing): Now, where it would end would be—and this is an illustration of how silly a percentage system is, if you interpret it as you propably do; but, we will go out and look at a piece of property, and our man will say that this property is worth about five thousand dollars, and maybe one of our other members will not agree with that; he thinks it is worth six thousand dollars; and when we ask them what they have in mind for the mortgage loan, why, they are maybe one hundred dollars apart; they just approach it by a different valuation system, one being about seventy-five per cent, on an older house, and the other may be heading up to two-thirds, on a more elaborate system of valuation, but they end up about the same.

Now, we use four men on our loaning work, not always positively, but our Loan Committee consists of four men, (32) if we can get them all.

Q. I take it from what you said before, that you do take into consideration in the making of a loan, the person's credit standing, the one who comes to you for a loan?

A. Yes, in fairness to him, we do.

Q. Are there any restrictions on the class of people to whom you would loan money?

A. No.

Q. Are there any restrictions on the amount which you loan?

A. As relates to people?

Q. Not as relates to people, and not as relates to the percentage of the appraised value, but as relates to the amount of a loan; in other words, do you have a ceiling on the amount which you loan?

A. A ceiling?

Q. Yes.

1056a Exhibit 72—Deposition of James H. Jerome
Direct Examination

A. No; no established ceiling.

Q. Now, turning to Plaintiff's Exhibit 3, which is your statement as of December 31, 1952, you have listed under assets, GI mortgage loans.

A. Yes, sir.

Q. Would you just briefly describe what those are?

A. Those are mortgage loans made under the Veterans Act.

Q. In accordance with the Act?

(33) A. Yes, sir.

Q. And the FHA loans, the FHA mortgage loans?

A. Oh, the same would be true; they are insured by the Federal Housing Administration; they are all Title 2 loans.

Q. You have just said that both the GI and the FHA loans are insured or guaranteed by governmental agencies. That is what you have just stated?

A. Yes.

Q. Then you have first mortgage loans?

A. Yes; those are conventional loans.

Q. And those are the ones that we have been discussing primarily in the past few minutes?

A. Yes.

Q. And then there is an entry, "Land contracts"?

A. Yes.

Q. What is meant by that? What was meant by that term?

A. Of course, a mortgage loan is permissible only where the debtor is the owner of the title, or becomes the owner of the title. A land contract is an agreement on the part of a buyer to purchase from a seller, and gets the property at a stated price and under stated conditions; and those result from properties that we acquired during the depression days, and sold under the

Exhibit 72—Deposition of James H. Jerome 1057a
Direct Examination

condition of a small down payment, and monthly payments, and ultimately the delivery of title; and contracts (34) that we from time to time purchase.

Q: I notice that that is a fairly small amount; that it represents a fairly small amount of your assets?

A. Yes, sir.

Q. So that it is not a normal type of—

A. (Interrupting): It is a limited type of transaction; and the bulk of it in 1952 was probably the result of necessary foreclosures in the thirties.

Q. Now, passing over to the liability side, Mr. Jerome—

A. Yes.

Q. You have the term under "Liabilities," "Savings and Investment Accounts," and I take it that those are the type of share accounts that we discussed before (indicating)?

A. Yes, that is the same title.

Q. And then "Loans in Process" (indicating)?

A. Yes, sir.

Q. What is meant by that term?

A. "Loans in Process" are construction and repair loans, on which the loan is predicated upon the completion of certain stated improvements to or construction of property; and we, making the loan, of course, would not disburse that money until, or as those improvements actually became incorporated on or in the real property.

Q. So that, this is something that you set up—

(35) A. (Interrupting): That is providing how fast they do certain things, and it is owing to the creditors.

Q. But eventually, that would be finalized in the form of a first mortgage?

A. Yes, it is finalized at the time that the loan is closed, and this (indicating) represents the undisbursed amounts of the loans, or, of the mortgage assets.

1058a *Exhibit 72—Deposition of James H. Jerome*
Direct Examination

Q. Then you have the term "Specific Reserves"?

A. Yes.

Q. What sort of a reserve is that?

A. "Specific reserves" are reserves set up for certain—they are not in the category of general legal reserves. Under our law, the legal reserve would be used only in the event of actual loss on any asset. Now, specific reserves may move to undivided profits, or, they may be moved to losses, and be charged off as loss; for instance on contracts, we may have a discount margin in them that is not earned until that contract is completed, and, until that time, it is carried in "Specific Reserves."

Now, we have a similar situation in some other minor transactions that I do not believe are at all important.

Q. What about the term "General Reserves" which you have listed here (indicating)?

A. "General Reserves" pick up our legal reserve, our undivided (36) profit reserve, our savings loan cash reserve, and those outside of undivided profits are all locked in the reserve here (indicating).

Q. Can you tell us what is the shareholders' interest in your reserves, undivided profits, and that sort of thing?

A. I do not know that I am answering you as you would anticipate, but since he is a shareholder, it is in his safety, that is, it is for his safety.

Q. I assume, if you liquidated tomorrow, he would get his aliquot share, depending upon what his interest is?

A. Yes, if there were not losses.

Q. Speaking again of 1952, and the years prior thereto, Mr. Jerome, what other services did your Association offer its customers or shareholders, or the

Exhibit 72—Deposition of James H. Jerome 1059a
Direct Examination

borrowing members? Do you have, or did you have safety deposit boxes?

A. Oh, no, we have never had.

Q. Did you issue money orders or traveler's checks?

A. Yes, I believe we did. Oh, when you say "money orders," they are titled "Bank Money Orders," where the man pays the amount, and we issue a check; and that is a convenience so as to let him carry his cash in paper form.

Q. Did you have checking accounts?

A. No, sir.

Q. Did you at that time have or permit savings by mail?

(37) A. In 1952?

Q. Yes.

A. I cannot answer you on that; I don't know; it has been going on in connection with advertising, but I do not know whether we did at that particular time, or not.

Q. Did you operate Christmas and Vacation Clubs, so-called?

A. Yes, but we haven't any Vacation Club now; but we do have Christmas Savings.

Q. Did you advertise?

A. Did we advertise?

Q. Yes.

A. Yes.

Q. In what area?

A. We used the newspaper and radio, but at that time I don't believe we were using television; at least if so, it was to such a minor extent that it didn't amount to anything.

Q. I understand that you have had prior experience as an officer of State and National Associations, that is, Savings and Loan Associations?

A. Yes.

1060a Exhibit 72—Deposition of James H. Jerome
Direct Examination

Q. Is that so?

A. Yes.

Q. That is, you have been active in them?

A. Yes.

(38) Q. Are you generally familiar with the operations of other State Savings and Loan Associations, and/or Building and Loan Associations, in Michigan?

A. In Michigan?

Q. In Michigan.

A. Well, generally.

Q. Is their operation pretty much as you have described it here?

A. Yes. There might be some minor differences, but fundamentally the Federals are governed under Federal law, and the States are under State law, and pretty generally, the boys stay naturally—

Q. (Interposing): All of the State Associations operate in the same way, generally, as the Saginaw Association?

A. Yes, sir.

Q. How many employees did you have in 1952, do you remember, that is, approximately?

A. Actually? What does that show our assets are (indicating)? I can come close to it by that (indicating).

Q. This is sixteen million in 1952 (referring to Plaintiff's Exhibit 4).

A. Well, sixteen million; well, we would have had approximately fifteen or sixteen employees then. We broke down so completely during the war, because we just didn't have any mortgage business, and then it all blossomed out and things started (39) jumping, so I haven't the figure correctly in my mind. But, I may be able to get it from the State report, but I don't know whether they carry it, or not.

Exhibit 72—Deposition of James H. Jerome 1061a
Direct Examination

Q. I do not think the State report carries it. This is the report, I think, here (indicating); but I do not notice anything of that kind.

A. No, that does not have it.

.

A. (After consulting with a gentleman in the office): There were twenty employees in 1952.

Q. (By Mr. Van Zile, continuing): What were your office hours at that time, Mr. Jerome?

A. (There was no answer from the witness.)

Q. Do you recall your business hours at that time?

A. Oh, usually, they were from nine to — well, at that time I don't know whether we had gone to four-thirty then, or not.

Mr. Lamson: I think that it was nine to three and half day on Saturday.

(40) Q. (By Mr. Van Zile, continuing): Nine to three, and half day on Saturday?

Mr. Lamson: Yes.

A. Yes.

Q. (By Mr. Van Zile, continuing): Mr. Jerome, I show you Plaintiff's Exhibit 4. I wish you would explain some of the figures that show up there (indicating).

Now, down at the bottom on page 36, I see "First Mortgage Loans Number of accounts, 3962" (indicating).

A. Yes, sir.

Q. And, as I say, this is page 36 of Plaintiff's Exhibit 4, and it contains a report on the First Savings and Loan Association, Saginaw, Michigan (indicating). I am now referring to the bottom of the page (indicating), where it says under "Miscellaneous information," "First mortgage loans, 3,962."

Does that refer, Mr. Jerome, to the number of loans that you had outstanding, as of the date of that report?

1062a Exhibit 72—*Deposition of James H. Jerome*
Cross Examination

A. That is correct.

Q. I mean, that is not the number of loans that you made during that fiscal year?

A. Oh, no.

Q. Your "Interest rate 4% to 6%," that is the general spread?

A. Yes.

Q. And then "Number of invested share accounts, 5,869." That (41) again refers to the total number of share accounts as of the end of that fiscal year?

A. That is correct.

(An application form of First Savings & Loan Association of Saginaw County, Michigan, was thereupon marked Plaintiff's Exhibit No. 5, Dec. 13/57, C.)

Q. (By Mr. Van Zile, continuing): Will you identify for the record Plaintiff's Exhibit No. 5, and tell us what it is, Mr. Jerome (handing the exhibit to the witness)?

A. This is an application for a mortgage loan, to First Savings & Loan Association, of Saginaw County, Michigan.

Q. And this is a type of application that you had your borrowers fill out in 1952?

A. It is substantially the same, yes, sir.

Mr. Van Zile: Thank you. That is all. No further questions now.

(42)

Cross Examination

By Mr. Dexter:

Q. The questions I shall ask you, Mr. Jerome, will relate to the year 1952. Is that understood?

A. Yes.

Q. Now, under what law were you incorporated?

A. Under the Michigan Building and Loan Act, Book No. 20—

Exhibit 72—Deposition of James H. Jerome 1063a
Cross Examination

Q. (Interposing): Of what year?

A. 1887.

Q. As I understand it, Plaintiff's Exhibit No. 1, your By-Laws, are the by-laws that you operated under in 1952?

A. That is correct.

Q. And in all of your operations, you conform to your By-Laws, and to the requirements of the statute under which you were incorporated?

A. That is correct.

Q. Do you have any knowledge of any opposition on the part of banks in the Saginaw area, at the time your charter was granted?

A. I have no knowledge of any, no; in fact, I did not have any knowledge at all, for the record.

Q. Your charter was granted when?

A. 1887.

Q. Have you had any knowledge, for the period that we are talking about, of opposition from the banks, in regard to your charter, (43) or your activities?

A. None that I know of.

Q. In reference to the type of shares or accounts that the Association has, may any of the shares be assigned?

A. In 1952, yes.

Q. Which shares were those that could be assigned?

A. Well, in 1952, any of the savings shares, or accounts, as we call them, were possible of assignment to another party, but we no longer continue that practice.

Q. Is the procedure necessary to affect that assignment as spelled out in your By-Laws, Exhibit 1?

A. That is correct.

Q. And that would be the only way that they could be assigned, as provided in these By-Laws?

A. That is correct.

1064a *Exhibit 72--Deposition of James H. Jerome*
Cross Examination

Q. And that would indicate the type of shares or accounts that could be assigned?

A. That is right.

Q. May any of these shares be redeemed or re-purchased, at the option of the Association?

A. Yes, it is possible.

Q. Can you explain how that can be done, or where that can be found?

A. You mean, in the By-Laws?

(44) Q. Well, if it is in the By-Laws, we would like to know that, and, if it is done in some other manner, other than the By-Laws, we would like to know that.

A. Well, I don't know that I know.

(After examining the By-Laws): Article XVIII of the By-Laws—you mean the By-Laws dating back to when, to 1952?

Q. Yes, Plaintiff's Exhibit 1.

A. In Article XVIII, there is a provision permitting the Board of Directors to call any of its shares for cancellation at any time on thirty days notice.

That is on page 9.

Q. Does that provision, on page 9, indicate what is required to be paid by the Association, to retire the shares?

A. I don't know as I quite understand you.

Q. Then, let me ask you this: Would the shares be retired at the par value, plus the dividend that would be payable at that time?

A. At the book value, yes.

Q. The book value?

A. Yes.

Q. Then, in retiring these shares, they would not necessarily participate in a pro rata equitable distribution of all of the assets of the Association?

(45) A. That is correct.

Exhibit 72^d—Deposition of James H. Jerome 1065a
Cross Examination

Q. And, as I understand it, from the language of Article XVIII, on page 9 of Plaintiff's Exhibit 1, this would be true in reference to all of the types of shares or accounts that would be outstanding?

A. That is correct.

Q. Do you reserve the power to refuse anyone's wish to become a shareholder?

A. No.

Q. Have the stockholders and directors expressly authorized by resolution all types of business activity in which your Association engages, and, of course, we are referring to 1952?

A. None other than those that are set forth in the By-Laws.

Q. Can you engage in any other business other than that set forth in the By-Laws?

A. No.

Q. What cash reserves and deposits are you required to keep?

A. We are required under the State law—nothing, in the matter of how much has to be kept, but we are required, in reserve only, as to how much is to be contributed from earnings, under specified conditions of the State law. But, under the Federal Savings and Loan Insurance Corporation legislation, we are required to establish reserves, to a minimum amount of six per cent, in the period of twenty years from the issuance of (40) the insurance factor. Now, I might clarify that and say that that is subject to change by the Federal Savings and Loan Insurance Corporation.

Q. Is that in the form of cash reserves?

A. No.

Q. Then, what would be the nature of the reserve?

1066a Exhibit 72—Deposition of James H. Jerome
Cross Examination

A. The reserve would, frankly, be distributed all through your assets structure, and it could be all cash, if your cash equalled that amount.

Q. Or, it could be furniture, or, the building—

A. A building.

Q. And so on?

A. Well, whatever you wanted to take it to; that is, it is not specifically allocated; it is simply a reserve structure.

Q. And any requirement of your financial structure, in addition to this type of reserve, would be as spelled out in the State law, under which you are incorporated?

A. That is correct.

Q. Now, I know that your attorney touched upon this in your direct examination, but would you describe, as completely as you can, your sources of capital, and borrowed money?

A. The source of capital and borrowed money?

Q. Yes.

A. The source for our money, of course, comes from our investors, (47) that is our major source of funds; and it can be, as I previously stated, divided into three types of investments, which were then in existence, being optional savings shares, advance payment shares, and fully paid shares.

Now, as to the borrowing ability of the institution, it comes from different sources that we elect to borrow from, namely, the Federal Home Loan Bank, or, private banking structures.

Q. Are either of those two latter sources a source of your capital?

A. The two latter sources are not a source of capital, no, not as I understand capital.

Q. Have you borrowed from those sources?

Exhibit 72—Deposition of James H. Jerome 1067a
Cross Examination

A. When?

Q. For the period we are talking about?

A. In 1952?

Q. Yes.

A. Yes. What does it show there (indicating on Plaintiff's Exhibit 3): \$700,000.

Q. \$700,000?

A. Yes.

Q. That would be the amount of money that you borrowed from the Federal Home Loan Bank?

A. No, not that we borrowed at that time, but what we owed at that (48) time.

Q. What you owed at that time?

A. Yes.

Q. That is, you borrowed that from time to time?

A. Yes.

Q. And it shows that much outstanding as of the date of this statement of condition, of December 31, 1952, which is Plaintiff's Exhibit 3?

A. Yes.

Q. Now, initially, was there any requirement in your capital structure, in becoming a State Savings and Loan Association, under the Act that you referred to, that is different from your source of capital for the period we are talking about?

A. No, not that I can imagine offhand. The source was the subscription of funds to the formation, but I do not, frankly, know the requirement at the origin, as to how much they had to develop in cash subscription to receive their charter grant.

Q. That would be spelled out in the act of Incorporation?

A. Yes, and probably in the charter itself, I imagine.

Q. Do you have available any copies of the charter?

A. I think I have.

1068a Exhibit 72—Deposition of James H. Jerome
Cross Examination

(The witness then produced a document.)

A. There are the people (indicating) who subscribed to shares, but it does not give the dollar amounts (indicating).

(49) Mr. Dexter: For the record, we can assume, to the extent of its being material, that their original charter would be in accordance with the law in existence at the time they were incorporated.

Mr. Van Zile: Yes; and I might say, that if either one of us should desire a copy, perhaps we could request Mr. Lamson to have a photostat made, at our expense, of course, if we want it.

Mr. Dexter: Yes.

Q. (By Mr. Dexter, continuing): As I understand it, you stated, did you not, that you did not maintain any checking accounts for your customers, or for anyone else?

A. None other than—unless you interpret so-called money orders as checking accounts.

Q. Do you guarantee interest to your shareholders?

A. We are prohibited by law from guaranteeing interest.

Q. Do your shareholders have the right under the By-Laws to withdraw their money on demand?

A. Not under the By-Laws, no, sir. They have the right of withdrawal, but not unlimited.

Q. And that right of withdrawal would be spelled out in the By-Laws?

A. As set forth in the By-Laws.

Q. Are your shareholders considered as creditors by your Association?

(50) A. No, sir.

Q. Where do you keep the cash you are required to have on hand for business needs?

A. In point of our depositories, you mean?

Exhibit 72—Deposition of James H. Jerome 1069a
Cross Examination

Q. Yes.

A. Our funds are currently carried at the Second National Bank of Saginaw; the Federal Home Loan Bank of Indianapolis, and a small token deposit in the Chase Manhattan Bank of New York.

Now, in 1952, I don't know where they were. I would have to have our auditor check back to get the answer to that question.

Mr. Lamson: The only debatable one would be the Chase-Manhattan Bank, in New York, as to whether we had money there at that time, or not. Of course, they were in the Second National Bank, but it has varied.

(To the witness): You had some at the Michigan National too?

A. Yes, we had some at the Michigan National.

Mr. Lamson: At that time?

A. I don't know whether we had any there at that time, or not.

(The witness then telephoned to an outside office.)

A. (To counsel): Are you talking of the fiscal year ending June 30, 1952?

(51) Mr. Dexter: Yes.

A. I will have that checked for you in just a minute.

Mr. Dexter: All right.

Q.—(By Mr. Dexter, continuing): Are your cash requirements kept in regular bank commercial accounts?

A. No.

Q. What kind of accounts is it kept in?

A. Oh, they are kept in commercial banks, and Treasury bonds, notes or bills, and Federal Home Loan Bank notes. We are very limited in our right to invest our money.

Q. Do you maintain any other kinds of deposits in commercial banks, or do any other sort of business with

1070a, Exhibit 72—*Deposition of James H. Jerome*
Cross Examination

commercial banks, other than what you have just referred to?

A. None other than we have a right to borrow from them, and in years gone by we have, but I don't think we were borrowing from any of them in 1952.

Q. I think that you have testified about the general nature of your loans.

Will you state what percentage of your loans were made to individuals?

A. In 1952, it would be almost one hundred per cent of them.

Q. As I understand it, most of those loans were home loans, is that right?

A. Oh, yes.

(52) Q. Were most of them for the purpose of home purchase by the individual that became the borrowing member?

A. Now, you may not want this as a matter of record, but I will kind of summarize it, and then if you wish it, I can pick it up for you.

(Then followed a short discussion off the record.)

Mr. Van Zile: Let it be stipulated at this point reference was being made by Mr. Jerome to the monthly reports by his Association to the Secretary of State, specifically the monthly reports being made during the year 1952.

Mr. Dexter: Yes, that is right.

Q. (By Mr. Dexter, continuing): Mr. Jerome, as I understand it from the discussion off the record, your monthly reports to the Secretary of State would indicate the answer to my previous question?

A. Yes, sir.

Q. Now, do you have the answer about the place, or the banks that you did business with, during the year 1952?

Exhibit 72—Deposition of James H. Jerome 1071a.

Cross Examination

A. Yes.

Q. Will you please state what those banks were, and the nature of the business?

A. The Second National Bank & Trust Company; the Federal Home Loan (53) Bank of Indianapolis; the Chase National Bank, then, of New York; and then I have got to try and find just what these "CD's" were, if you want that.

Q. Well, you can just speculate. Do you believe it was in the Michigan National Bank?

A. Well, it was either the Michigan National, or the Second National, one of the two.

Q. Of Saginaw?

A. That is right.

Q. O. K.

Do you loan any money to finance companies?

A. No, sir.

Q. Do you loan money secured by chattel mortgages on automobiles?

A. No, sir.

(The witness answered the telephone and talked.)

A. It was in the Michigan National.

Q. Then, we can have the record show that the "CD's" of \$100,000, in 1952, were in the Michigan National Bank of Saginaw?

A. That is right.

Q. Is that right, Mr. Jerome?

A. Yes, sir.

Q. Mr. Jerome, do you secure your loans by accepting shares of stock as collateral?

A. Do you mean our own investment shares?

(54) Q. Do you loan people money by taking their shares of stock as collateral?

A. Their shares with us?

1072a Exhibit 72--*Deposition of James H. Jerome*
Cross Examination

Q. Yes?

A. Yes.

Q. How about shares of stock, generally other than the membership shares?

A. No; we are not permitted to do that.

Q. Do you secure your loans by accepting bills of lading, Mr. Jerome?

A. No, sir.

Q. Or fungible goods?

A. No, sir.

Q. Do you secure your loans by assignments of accounts receivable?

A. No, sir.

Q. As I understand it, then, your loans primarily are on first mortgages, or on the members'—the member-shareholders' interest in your association?

A. The only other is the right, under the Michigan law, to make Title 1 and FHA loans.

Q. Do you make any unsecured loans on the strength of a borrower's financial statement?

A. None other than the Title 1 loans.

Q. Do you have any idea what is the average amount of the loans that (55) you make?

Mr. Van Zile: I think we can figure that out from the reports.

Q. (By Mr. Dexter, continuing): Then, as I understand it, Mr. Jerome, the answer to my last question can be obtained from the monthly reports that you file with the Savings and Loan Division of the Secretary of State's office?

A. Yes, sir.

Q. Do you make any "straight mortgage" loans?

A. No.

Q. Do you make any "open-end" type of loans?

A. Yes, the so-called "open-end".

Exhibit 72—Deposition of James H. Jerome 1073a
Cross Examination

Q. Do you have a maximum that you go to in reference to the "open-end" type of loans?

A. The recorded amount of the mortgage, the amount existing in the mortgage.

Q. What provisions are made in your mortgages concerning prepayment?

A. They have the right of prepayment at any time, in any amount. We do, however, according to our understanding, have the right to require prepayment in multiples of the monthly payment, but we do not exercise it. That was simply incorporated in case we ran into a certain type of accounting system, so that we could then put our older operators on that accounting plan, (56) and we did that for a long time, but we have never insisted on it.

Q. Do you consider your prepayment provisions any more or less liberal than prepayment clauses used in bank mortgages in this area?

A. Well, frankly, I don't know the prepayment clauses in bank mortgages.

Maybe I better state this off the record.

(Then followed a short discussion off the record.)

Q. (By Mr. Dexter, continuing): Do you sell or assign any of your mortgages?

A. We never have.

Q. Once the mortgage and the mortgage note are signed, how are the funds then made available to the borrower?

A. Would you repeat that question?

Q. Once the mortgage and the mortgage note are signed, how are the funds then made available to the borrower?

A. Do you want the technical answer, that is, the instrument that is used?

1074a Exhibit 72—Deposition of James H. Jerome
Cross Examination

Q. Do you ever make the funds available by drawing a draft on your commercial bank account, for example?

A. No. We draw on our checking account. You said "draft"?

Q. Yes.

(57) A. Maybe you and I are talking about a different thing.

Q. Well—

A. We issue our own checks to the individual for the amount he is to receive; they are drawn on our bank account, but they are not, in our judgment, a draft.

Q. Oh, I understand.

A. Yes.

Q. In other words, you use the regular commercial checking account to pay the money to your borrowers?

A. Yes.

Q. Do you charge the full rate permitted for servicing VA and FHA mortgages?

A. You mean, in 1952?

Q. Yes.

A. I will say that we do now, but I am trying to think whether we did in 1952. I think I will answer that question, unless you want me to check it, or, to look it up, take time to look it up, yes, that we charged the amount permissible.

Q. You realize, Mr. Jerome, that we are discussing only the calendar year of 1952?

A. Yes.

Q. Do you know what the situation was at that time, of the mortgage money market, in the area that you do business in?

A. You mean, was it tight, liberal, or—?

(58) Q. Yes.

Exhibit 72—Deposition of James H. Jerome 1075a
Cross Examination

A. Oh, it was liberal, as far as we were concerned, in this area here, as near as I can recall.

Q. Did the demand for mortgage money on homes exceed that which could be supplied by your Association?

A. No.

Q. And other building and loan associations, and banks?

A. No. I think that is demonstrated by our obligation to the Federal Home Loan Bank, which runs only \$700,000. If we were in a depression, we would be owing far more than that.

Now, frankly, it will vary with the institutions in the community.

Now, there is an example of that here in 1951, if you will look at your 1952 statement, our advances to the Federal Home Loan Bank, I think you said were seven hundred or six hundred thousand?

Q. Seven hundred thousand.

A. On December 31, 1951, it was a million six hundred and fifty thousand; so that meant that you would not say you would call that a tight money market.

Q. Now, Mr. Jerome, I realize that you have touched upon this question a little bit, but could you describe the nature and extent of governmental supervision, and the National agency that supervises you?

(59) A. In a State chartered institution, we are subject to two separate supervisions, and, while they work together, they are separate identities. The primary supervision responsibility lies with the Savings and Loan Division of the State Department of the State of Michigan.

Q. Do you mean the Secretary of State?

1076a Exhibit 72—Deposition of James H. Jerome
Cross Examination

A. The Secretary of State. They also work with, and audit with the auditing group of the Federal Savings and Loan Insurance Corporation; it is a joint audit; and we receive our basic supervision from the Secretary of State's office, and a supplemental supervision from the Federal Savings and Loan Insurance Corporation, in relation to their rules and regulations.

Q. Generally, what is the type of that regulation?

A. Well, the regulations are that under State operation, we must conform with the State law, and our accounting must be correct and in balance. Under the Federal supervision, we must conform with the rules and regulations of the Federal Savings and Loan Insurance Corporation.

Q. Is your Association a member of the Federal Reserve System?

A. No, sir.

Q. Are you a member of the Federal Deposit Insurance Corporation?

A. No, sir.

Q. Are you permitted to borrow from the Federal Reserve System?

(60) A. No, sir.

Q. I understand, from your previous testimony, that you are a member of the Federal Home Loan Bank of Indianapolis?

A. That is correct.

Q. What Agency of the Government insures your stockholders?

A. The Federal Savings and Loan Insurance Corporation.

Q. Do your By-Laws state the provisions relative to paying off your shareholders, or investors, in the event of emergency, or insolvency?

Exhibit 72—Deposition of James H. Jerome 1077a
Cross Examination

Mr. Van Zile: I am willing to stipulate that whatever the by-laws show, they show.

Mr. Dexter: Also, this would be subject to the By-Laws, would it not?

A. This has reference to the Michigan law on withdrawals, relative to Savings and Loan Associations?

Mr. Dexter: That was Act 50 of the Public Acts of 1869?

A. No; 1887, Book No. 50.

Q. (By Mr. Dexter, continuing): Also, it would be subject, would it not to the rules and regulations of the Federal Savings and Loan Insurance Association?

A. Yes.

Q. Do you have copies of those rules and regulations, perchance?

A. Well, physically I have not, but the Michigan law does set up a (61) system of withdrawal manners in the event an association elects to go on a stipulated withdrawal notice.

Q. Mr. Jerome, do you know whether or not your reports to the Secretary of State would indicate your tax payments, on your earnings?

A. Are you talking about tax payments to the State of Michigan?

Q. The State of Michigan, or the Federal Government, the total tax payments?

A. The real estate taxes?

Q. Yes.

A. No; there is nothing on the record that calls for that, that I see.

Q. Would that type of information be indicated in any other reports that the State would have, Mr. Jerome?

1078a Exhibit 72—Deposition of James H. Jerome
Re-direct Examination

A. Yes; the audit-reports of the State of Michigan would indicate that.

Q. I will ask you if you do any of the following:
Issue letters of credit?

A. No.

Q. Issue travelers checks?

A. Yes; the American Express.

• • • • •

(63) *Re-direct Examination*

By Mr. Van Zile:

Q. Your investments in shares, are they largely by individuals? You said "Yes," did you not?

A. Yes, sir.

Q. But you do accept investments from other than individuals, I take it?

A. Yes.

Q. Do you have any idea what the percentage of that was, by other than individuals in 1952?

(64) A. Well, in 1952 it would have been almost nil; it would be very low.

Q. How about borrowings, are borrowings made by people other than individuals?

A. In 1952, no, no.

Q. You have no rule against borrowing by other than individuals?

A. No, not now.

Q. Did you then in 1952?

A. May I be off the record until I talk to Mr. Lamson?

Mr. Van Zile: Certainly.

(The witness then talked to Mr. Lamson, off the record.)

Exhibit 72—Deposition of James H. Jerome 1079a
Re-direct Examination

Q. (By Mr. Van Zile, continuing): Have you refinanced mortgage loans, where there was an outstanding loan from a bank?

A. Oh, yes, sure. They have refinanced ours, too.

Q. I am sure they have.

Now, on your advertising, which we discussed generally; can you tell me, in point of time, how often this appeared, was it daily, weekly, monthly, or what?

A. Generally, our advertising in the newspaper is three times a week.

Q. You are also on the radio?

A. On radio, on one station, we have a news broadcast every day; and on the other station every other day; and then I think (65) there is one that we have a couple of times a week.

Q. Do you record all of your real estate mortgages?

A. Yes, sir.

Mr. Van Zile: That is all I have.

Mr. Dexter: I have nothing further.

Mr. Van Zile: We waived signature, did we not?

Mr. Dexter: Yes.

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EXHIBIT 73

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(1) The deposition of George L. Young, a witness on behalf of the plaintiff, taken before Antoinette Duda, a Notary Public in and for the County of Kent and State of Michigan, at the offices of the Grand Rapids Mutual Federal Savings and Loan Association, 201 Monroe Avenue, N. W., Grand Rapids, Michigan, on August 14, 1956, at 1:30 o'clock p. m., pursuant to stipulation and agreement of counsel.

Appearances: Butzel, Eaman, Long, Gust & Kennedy (Detroit, Michigan), by Mr. Philip T. Van Zile, and Mr. Laurent K. Varnum, Grand Rapids, Michigan, appeared on behalf of the plaintiff and the plaintiff intervenors; Mr. William D. Dexter, Assistant Attorney General, appeared on behalf of the defendants; Dickinson, Wright, Davis, McKean & Cudlip, (Detroit, Michigan), by Messrs. William B. Cudlip, Gerald Warren, and T. Donald Wade, appeared on behalf of the defendant intervenors.

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(2) Mr. Dexter: Let the record show that the defendants object to this whole line of testimony to be obtained from the deposition of Mr. Young as being immaterial and irrelevant in this matter. I think it is fair to state, also that it is agreeable with counsel that that objection will obtain throughout this whole deposition, without repeating it after any particular questioning?

Mr. Van Zile: Yes.

Mr. Cudlip: Mr. Van Zile, does that apply to defendant intervenors, too?

Mr. Van Zile: Yes.

Exhibit 73—Deposition of George L. Young 1081a
Direct Examination

Mr. Cudlip: The defendant intervenors adopt the same position as defendants adopt.

Mr. Dexter: All the parties to this cause agree that any objections that they have to the admissibility of any of the evidence will be really saved.

Mr. Van Zile: Yes, that is correct.

(3) YOUNG GEORGE L., a witness produced on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Van Zile:

Q. Will you state your full name, please, Mr. Young?

A. George L. Young.

Q. And where do you live?

A. East Grand Rapids.

Q. Your deposition is being taken pursuant to a subpoena served upon you, is that correct?

A. Yes, sir.

Q. What is your position with the Grand Rapids Mutual Federal Savings and Loan Association?

A. I am the President.

Q. Are you also a director?

A. Yes, sir.

Q. How long have you been President and director of that association?

A. Well, they were not concurrent. I think I have been a director since about 1939, and President since the latter part of '49.

Q. And how long have you been employed by the Grand Rapids Mutual Federal Savings and Loan Association?

1082a Exhibit 73—Deposition of George L. Young
Direct Examination

(4) A. Thirty years.

Q. How long is that, sir?

A. Thirty years.

Q. Where is the association located?

A. Grand Rapids, Michigan.

Q. At what address?

A. 201 Monroe Avenue, Northwest.

Q. And how long has it been located there?

A. It has been in this location since 1925.

Q. Was it located elsewhere in Grand Rapids prior to that time?

A. Yes. Immediately prior to that, it was in what was called the Widdicomb Building. I can't tell you just how many years it was located there.

Q. Now, your association is a Federal association, is that right?

A. Currently, yes, sir.

Q. Organized under the Federal Home Loan Act?

A. Yes, sir.

Q. When was it so organized?

A. We were originally organized and chartered under state charter in 1888, and we relinquished that charter for a Federal charter in 1938.

Q. So that since 1938 you have been a Federal association, is that correct?

(5) A. Yes, sir.

Q. Does your association have any branches?

A. We do not.

Q. It just has the one office?

A. Yes, sir.

Q. Located where you just told us, is that right?

A. Yes, sir.

Q. In what general area does your association do business?

Exhibit 73—Deposition of George L. Young 1083a
Direct Examination

A. Our lending area is confined to what we consider Greater Grand Rapids.

Q. Does that include any cities other than Grand Rapids?

A. Yes; we loan in Grandville, for example; East Grand Rapids.

Q. How about the locations, geographically, of your members; that is, the people who own your shares?

A. Primarily in Grand Rapids, although we have money from throughout the State of Michigan and from several other states, many other states.

Q. Is there a large percentage of your shareholders that are located outside of the Grand Rapids area?

A. I would say percentage-wise not large.

.

(6) Q. I will hand you Plaintiff's Exhibit 1, and ask you to identify that, please?

A. This is the passbook issued to savings account holders.

Q. And Exhibit 2?

A. Is the passbook issued to mortgage borrowers.

Q. And Exhibit 3?

A. Copy of our Charter and By-laws.

Q. Now, Exhibit 3, Mr. Young, is your Charter and By-laws. Those prescribe the conditions under which your association operates, is that right?

A. Yes, sir.

Q. And were these Charter and By-laws the same in 1952?

A. Yes.

Q. How does your association obtain its capital?

A. Through the accumulation of savings of our members.

1084a Exhibit 73—Deposition of George L. Young
Direct Examination

Q. And how are your shareholders' or members' rights (7) represented? Are they represented by stock certificate, or otherwise?

A. They are represented by a certificate of membership.

Q. Is that certificate of membership contained in the savings book, Exhibit 1, or 2, or is it a separate document?

A. Exhibit 1 is the savings book, and that does contain the membership certificate.

Q. Do the members get any other type of certificate representing their interest in the association?

A. No. We do issue certificates not in passbook form, which are essentially the same.

Q. That is a separate document?

A. Yes, sir.

Q. Is it of the same type as the certificate contained in the passbook?

A. Yes, sir.

Q. Except that it is separate?

A. Yes, sir.

Q. How many types of shareholders do you have in your association?

A. Really only one; or perhaps, when you say "type", we have savings account holders and we have borrowing members, so there would perhaps be two types.

Q. Other than those two, though, there are no other types?

(8) A. There are no others.

Q. Now, how much must be invested or deposited to open an account and to obtain a membership?

A. I ask that you not use the word "deposit", Mr. Van Zile.

Exhibit 73—Deposition of George L. Young 1085a
Direct Examination

Q. All right. Can I ask how much must be invested?

A. \$1.00.

Q. \$1.00, and anything more than \$1.00?

A. And more than \$1.00.

Q. Must the investment be in any specific multiples, like \$50.00, \$100.00, or anything like that?

A. No.

Q. It can be in any amount a person wishes to invest, is that right?

A. Yes, sir.

Q. Are investments accepted at any particular time?

A. Any time.

Q. Now, I have also asked you, Mr. Young, if you would procure copies of your financial statements for the period ending December 31, 1951, and December 31, 1952.

.

(9) Q. Now, I will show you what the reporter has marked Plaintiff's Exhibit 4, and ask you what that is?

A. This is our financial statement as of December 31, 1951.

Q. And that correctly represents the assets of your association as of that date?

A. Yes, sir.

Q. I will show you Plaintiff's Exhibit 5 and ask you to identify that.

A. This is the financial statement as of December 31, 1952.

Q. And does that correctly represent your condition as of that date?

A. Yes, sir.

Q. Were both of these reports published?

A. Yes, sir.

Q. I wonder, in the description of liabilities on both statements, I notice the term "Savings Accounts." Does that consist of investments of your shareholders?

A. Yes.

1086a *Exhibit 73—Deposition of George L. Young*
Direct Examination

Q. Is that what that is meant to describe?

A. Yes, sir.

Q. And that, so far as each shareholder is concerned, would be reflected in their savings books, Exhibit 1, is that right?

(10) A. Yes, sir.

Q. Then, I notice on both statements under assets, three items, First Mortgage Loans, Loans on Savings Accounts, Properties Sold on Contract. Do those figures represent the indebtedness due from the various borrowing members?

A. Yes, sir.

Q. Would that be reflected in Plaintiff's Exhibit 2, the borrowing member's or mortgage book?

A. Well, the first item would be in that form of book.

Q. Yes?

A. The others would not.

Q. I see. Just the first mortgage loans?

A. Yes.

Q. Could you give me the number of savings members that you had as of December 31, 1951, and December 31, 1952?

A. December 31, 1951, we had a total of 5745 savings account holders.

Q. Do you have the number for 1952, Mr. Young?

A. Yes. At the end of 1952, there were 6099.

Q. Could you tell me what the difference between your shares and those of a commercial corporation are?

A. It is difficult to make a comparison of our account holders and those of a typical corporation, but I think that the Michigan Legislature, the United States Congress, various court decisions, have recognized that our savings accounts (11) more closely approximate a bank deposit than they do a typical corporate share of stock.

Exhibit 73—Deposition of George L. Young 1087a
Direct Examination

Q. That is, of a savings account deposit, or a commercial account?

A. The savings account deposit.

Q. Now, turning to your members, again, could you tell us whether your savings members come from any particular economic class in Grand Rapids and outside of Grand Rapids? By that, do they come from any particular income class: high income, middle income, low income?

A. I would say that they are a cross section of all income levels. Obviously, those of a middle income or higher income have more money to save.

Q. But all classes are then represented in your savings memberships?

A. I would say so.

Q. Now, turning to the withdrawal rights for savings members, are there any conditions normally imposed by your association on the withdrawal of funds invested?

A. No, sir.

Q. And dividends: How are dividends on your shares determined?

A. They are determined out of earnings, declared by the directors of the association.

Q. What particular factors, if any do you take into (12) consideration in determining what the dividend rate will be?

A. Well, the income of the association would be the dominant factor.

Q. Anything else?

A. Provision for operating expenses and additions to reserves and surplus.

Q. Now, after the dividends are declared, how are they paid?

1088a Exhibit 73—Deposition of George L. Young
Direct Examination

A. On the passbook accounts they are added to the balance, and compounded if they are not withdrawn. On the certificate accounts, they are mailed to the owner.

Q. That is, in the form of a check?

A. In the form of a check.

Q. May the dividends be taken in cash or credited to the savings account at the option of the member?

A. Yes; I said they are added to the account unless withdrawn. They may be withdrawn if the owner chooses.

Q. Now, what was the dividend rate in 1952, Mr. Young?

A. Two and a half per cent, payable one and a quarter per cent on June 30, and one and a quarter on December 31.

Q. If a savings account is withdrawn before the dividend payment period, do you pay any accrued—

A. No, sir.

Q. —interest, or, I should say, dividend?

A. No, not on the amount withdrawn.

(13) Q. Now, do you loan only to members?

A. Yes, sir.

Q. What procedure do you follow when a person seeks a loan from you, from your association?

A. He gives us the information required on our application for loan form, which includes location of the property, purpose of the loan, personal financial statement.

Q. I wonder if we might have a copy of that form before we leave, Mr. Young?

A. I'll be glad to give you one.

Q. I would like to make it a part of this deposition. Do you investigate the financial responsibility of the borrower before you grant him a loan?

Exhibit 73—Deposition of George L. Young 1089a
Direct Examination

A. Yes, sir.

Q. What types of collateral are taken for your loans?

A. Primarily, residential real estate.

Q. I notice on both of your statements, Exhibits 4 and 5, that you have a figure for loans on savings accounts. Would you explain what that sort of a loan is, Mr. Young?

A. A savings account holder may borrow against the value of his account, balance of his account.

Q. And what is the form of the obligation? Is it in the form of a note or—

A. In the form of a note.

(A document was handed to counsel by the witness.)

(14) Mr. Van Zile: Would you mark this as Exhibit 6.

(The document referred to was marked Plaintiff's Exhibit 6 for identification.)

Q. I now show you what we have had marked Plaintiff's Exhibit 6, and ask you what that is?

A. This is an application for loan, mortgage loan.

Q. And that is the form which you have just referred to?

A. Yes, sir.

Q. And that is the form that you have your borrowers fill in, is that right?

A. Among others. He also signs an application for membership form.

(A document was marked Plaintiff's Exhibit 7 for identification.)

Q. I show you Plaintiff's Exhibit 7 and ask you what that is?

A. This is a borrower's application for membership form.

1090a Exhibit 73—Deposition of George L. Young
Direct Examination

Q. So that he fills in that, in addition to the application for loan, Exhibit 6, is that right?

A. Before the loan is granted, yes, sir.

Q. And were these forms in use in 1952?

A. Yes.

Q. I would like to ask you whether you have any savings account members or borrowing members other than individuals?

A. Yes.

(15) Q. What would they be?

A. Corporation, trustees, partnerships.

Q. And are they both savings members and borrowing members?

A. Both.

Q. There are people—

A. May be either.

Q. I see; those that fall in both categories that are partnerships, corporations, trustees, and the like?

A. Yes.

Q. I see. That was true in 1952, I take it?

A. Yes.

Q. Now, on these two statements, Exhibits 4 and 5, I also notice an asset described as Properties Sold on Land Contract. Would you describe what those assets consist of?

A. Those are properties to which the association held title, which were subject to land contract sale.

Q. What types of properties were they?

A. Residential, I think, exclusively.

Q. Do you make any loans without collateral?

A. We do not.

Q. I might say that I am addressing these questions primarily to 1952. If there is any difference in that year, would you indicate it in your answers to the questions?

Exhibit 73—Deposition of George L. Young 1091a
Direct Examination

A. Yes.

(16) Q. Now, on both statements under assets are First Mortgage Loans. Are these the loans for which the borrower has to make out the application for loan and the application for membership, Exhibits 6 and 7?

A. Yes.

Q. On what types of property are these loans made?

A. I think I have said, primarily residential real estate.

Q. And do you also make some loans on commercial property?

A. Very infrequently.

Q. Could you tell us, percentage-wise, what those loans would amount to?

A. I have made some analysis of the loans closed in the year 1952, and I think that out of some 660 loans we made five that were on commercial type property.

Q. Now, do you have a record of the mortgages which you have taken during the period 1946 to 1952?

A. Say that again, please?

Q. Do you have a record of the mortgages which you took during the period 1946 to 1952, by years, in terms of numbers of mortgages per year and amounts, total amounts?

A. Yes. '46, you say?

Q. Yes.

A. It appears that in 1946 we reported a total of (17) 729 loans; total dollar amounts was \$3,073,000 and some-odd dollars. Do you want them for each of the succeeding years?

Q. If you would, please.

1092a Exhibit 73—Deposition of George L. Young
Direct Examination

A. 1947: 737; total, \$3,486,000. 1948: 659; total, \$3,074,000. 1949: 698; \$3,487,000. 1950: 866; total, \$4,503,000. The next year was, 672, \$3,723,000. 1952: 663, \$3,656,000.

Q. Thank you. Now, you say that the largest percentage of your mortgage loans are on residential property. Are your loans in that field confined to any particular class of property? By that I mean to property worth so many thousand dollars, or—

A. No.

Q. They are not restricted in any way in that sense?

A. No.

Q. For what purposes are your mortgages made?

A. Largely for purchase and construction.

Q. That is new construction?

A. New construction; also made for improvements and repair, sometimes for refinancing, other indebtedness, or a multiplicity of other purposes.

Q. Do you refinance mortgage loans where there is an outstanding loan from a bank?

A. We have. Ordinarily that would occur when the bank for one reason or another didn't desire to meet the needs of (18) the borrower.

Q. Can you tell us, percentage-wise, approximately how many of your loans are for new construction and how many for home purchase and how many for modernization? This is referring to the year 1952.

A.. For the year 1952, we made 129 loans for new construction, \$872,763. We made 325 loans for purchase, which involved \$2,162,133. We made 81 for refinancing, which could be properties originally pur-

Exhibit 73—Deposition of George L. Young 1093a
Direct Examination

chased under land contract and refinanced in mortgage loan. I do not have a breakdown of the number made for remodeling. Under our scheduling list, the remainder are under "other purposes." That would include remodeling or rehabilitation. There were 128 for \$237,243.

Q. Now, what types of mortgages do you take? Do you take FHA mortgages?

A. We do.

Q. That is, both the GI and VA?

A. We take GI, FHA, and so-called conventional.

Q. Yes. You do take the conventional type of mortgage, then?

A. The majority of our loans are conventional.

Q. Could you give us any breakdown on that, Mr. Young, for the year 1952, as to what number of mortgages were in the FHA class and what number were in the conventional class?

A. Yes, I think I can. Out of a total of 663, I think (19) I said, made in that year, 117 were FHA and they, I believe total about \$975,000. In that particular year we made only two under the VA plan; they total \$21,000. The remainder were conventional loans, and there were somewhere around two and three-quarter million—

Q. Just the difference, thank you. Do you use the open-end mortgage at all?

A. Yes, sir.

Q. For what purpose is the open-end mortgage used by you?

A. Any worthy purpose.

Q. Well, would you explain—perhaps the best way to go at it is: What is an open-end mortgage?

1094a Exhibit 73—Deposition of George L. Young
Direct Examination

A. Open-end mortgage is one that provides that an additional advance can be made under the security of the same mortgage by the signing of an additional note. In our case, we never make an advance where the total balance would exceed the original amount.

Q. Is that type of mortgage used for all of the purposes we have talked about; that is, for improvement in connection—

A. Yes, frequently for improvement.

Q. New construction? It wouldn't cover new construction, would it?

A. No; it would be a mortgage on an existing property where they desire to build a garage or add a room or storm (20) windows or many other possible things.

Q. Now, can you tell us, generally, what the terms of your conventional type mortgages are; that is, as to rate of interest, term, repayment, and so forth?

A. Most typical interest rate is five per cent. The term, up to twenty years.

Q. What would be the minimum period?

A. Well, by far the majority of our loans are made for periods in excess of ten years. Probably more than 90 or 95 per cent are for periods in excess of ten years.

Q. And what are your terms for repayment?

A. Monthly.

Q. What other charges are there in connection with such a mortgage?

A. On conventional loans we make no charge other than recording fees, abstract charges and attorney's opinion, appraisal fee. Typically, in 1952, they probably averaged \$25.00 to \$30.00 on a loan, regardless of size.

Exhibit 73—Deposition of George L. Young 1095a
Direct Examination

Q. Now, after the borrower has come to you to apply for a loan and has filled out these papers—that is, the application for membership, Exhibit 7, and the application for loan, Exhibit 6—and the loan has been approved, what else is the borrower required to do, other than repay, of course?

A. He has no further obligations.

(21) Q. What I am driving at: Is he required to invest any amount in your association?

A. No such requirement.

Q. Now, what other services does your association provide? Do you have safe deposit boxes?

A. We do not.

Q. Do you provide facilities for money orders, traveler's checks?

A. We have available, as a matter of convenience, American Express money orders and traveler's checks. We handle only a very small volume of it.

Q. Do you permit savings by mail?

A. Yes, sir.

Q. Do you have Christmas and vacation clubs?

A. We do not.

Q. Checking accounts?

A. We do not.

Q. Consumer credit loans?

A. We do not.

Q. Do you advertise?

A. Yes, to a nominal extent.

Q. Well, what do you mean by nominal? I mean, how often?

A. Oh, our advertisements are mainly newspaper, and we advertise, typically, once a week.

(22) Q. In the local paper?

A. Local paper, yes.

Q. Do you advertise by radio?

1096a Exhibit 73—Deposition of George L. Young
Direct Examination

A. We have, very rarely; probably did not at all in '52.

Q. So that in 1952 you were advertising once a week in the papers?

A. I believe that is about the extent of it.

Q. Now, in 1952, what taxes did you pay the State of Michigan?

A. Michigan intangibles tax.

Q. And what intangibles tax did you pay, or I should say—strike that. On what did you pay the intangibles tax?

A. On the aggregate of our savings accounts.

Q. At what rate?

A. Four mills, isn't it?

Q. Do you have your intangibles tax return for '52?

A. I don't have that here. I can tell you the amount of it.

Q. Do you have it with you, just as a matter of record?

A. I don't have the return here. I have the amount, if you—

Q. Would you give us the amount, then?

A. It appears that the amount paid for the year 1952 was \$6,198.51. We also, of course, paid the Michigan unemployment tax.

(23) Q. I don't care about that amount, but did you pay any other taxes other than that?

A. Not in 1952.

Q. So that the only tax that you paid the State of Michigan in 1952 other than the Michigan unemployment tax was the tax on your shares of \$6,198.51?

A. Yes.

Q. I wonder, Mr. Young, if you would be kind enough, if you have such available, to procure for us a sample of your advertising? Do you keep any clipping

Exhibit 73—Deposition of George L. Young 1097a
Cross Examination

file or anything like that, that we might have a photostat made of?

A. I doubt if I have available anything of '52.

Q. Well, was there any difference in your advertising in '52 from other years?

A. Not particularly. Naturally, there is always some change. It undoubtedly would be available through our agency.

Q. Well, if we could procure one sample of your advertising for that year, or something that is substantially similar to that, I would appreciate it.

A. I will try to procure it for you.

Q. Yes, if you can secure something similar for another year.

Mr. Van Zile: I have no further questions.

(24) *Cross Examination*

By Mr. Dexter.

Q. Mr. Young, you stated that Mutual Federal Savings and Loan Association of Grand Rapids was originally chartered by the state, is that true?

A. Yes, sir.

Q. Then, you stated that in 1938 you got a Federal charter, is that true?

A. Yes, sir.

Q. Do you know the reason for this change?

A. Oh, I think there were a number of reasons. Probably one was that in 1936 we had applied for membership in the Federal Savings and Loan Insurance Corporation to cover the insurance of our account holders, and being subject to Federal examination for that reason, it was a little more convenient to be subject to only one.

Q. Mr. Young, do you know what law you are incorporated under or chartered under?

1098a Exhibit 73—Deposition of George L. Young
Cross Examination

A. We hold the so-called Charter "K", pursuant to the provisions of Section 5 of the Home Owners' Loan Act of 1933. O

I would like to add, if I may, sir, that another reason for having changed to a Federal charter was a matter of uniformity.

Q. Would you explain that?

A. The rules and regulations under which Federals operate are somewhat more uniform than they are under state (25) legislation; or at least that was true at that time.

Q. Under what Federal agency's jurisdiction are you operating and did you operate in the year '52?

A. Federal Home Loan Bank Board.

Q. And at all times during the year '52 did you operate in accordance with their requirements?

A. Yes, sir.

Q. And in accordance with the requirements of the Home Owners' Loan Act of 1933?

A. Yes, sir.

Q. And in accordance with the charter and by-laws that have been introduced as Exhibit No. 3?

A. Yes, sir.

Q. Mr. Young, you have given some testimony in regard to the nature of your loan activity. Would it be fair to state that primarily your loans are to home owners?

A. Primarily, yes, sir.

Q. Would you state that that was primarily the purpose of the Federal Home Loan Bank system, of which you are a member?

A. Yes, sir.

Mr. Van Zile: I will object to that, on the grounds that it is a conclusion.

Mr. Cudde: Aren't all these reserved?

Exhibit 73—Deposition of George L. Young 1099a
Cross Examination

Mr. Van Zile: Well, I haven't reserved an objection.

(26) Mr. Van Zile: Perhaps it would be better if I simply reserved an objection similar to yours so I won't interrupt.

Mr. Dexter: All right.

Mr. Van Zile: I will so object to the questions propounded by the defendants' attorney and the defendant intervenors' attorney.

Q. Mr. Young, do you have any breakdown as to whether or not your loan members—for what purpose they obtained the loans?

A. Well, I have previously given you the breakdown for the year 1952, which would be typical.

Q. I mean, Mr. Young, by purpose, in addition to what you testified to, as the use put to the loan by the loan member; for example, do you know what percentage of your loans in 1952 were obtained by persons for building or improvement or financing their own homes?

A. Well, I can only tell you that 325 out of a total of 663 loans were for the purpose of purchase. That would be almost exclusively for loaner-occupant, for the purpose of buying his own home for his own family.

Q. Could you state approximately what the average size of your—strike that. Could you state the size of the majority of your loans for the year 1952?

(27) A. Well, probably the majority are in the range of \$5,000 to \$10,000, and almost wholly less than \$20,000.

Q. Mr. Young, you stated that primarily you loaned upon the basis of real estate security. Could you state for the year 1952 how much you would loan against any particular security?

1100a Exhibit 73—Deposition of George L. Young
Cross Examination

A. Our typical policy was to loan up to sixty per cent of appraised value on conventional loans. We do make a few loans that would exceed that amount; and, of course, FHA and GI loans invariably exceed that amount, by percentage.

Q. At the time that you were originally organized in 1888 and the time that you became Federalized in 1938, was there any opposition on the part of the banks in the Grand Rapids area to your organizing, to your knowledge?

A. There never has been.

Q. Have the stockholders and directors expressly authorized by resolution all types of business activity in which your association engages?

A. Yes, sir.

Q. And is it spelled out in this Plaintiff's Exhibit 3; that is, a general outline of your activity?

A. A general outline. Of course, there are rules and regulations that go beyond the charter and by-laws.

Q. But it is within this framework that you operate?

A. Yes, sir.

(28) Q. What cash reserves and deposits are you required to keep by law?

A. Currently it is set at six per cent. That, however, is distinctly a minimum, and we maintain some four times that amount.

Q. Was that true in '52?

A. Well, I don't have the exact percentage in mind as of that year, but at the close of 1952 we had cash and Government's of about \$3,600,000, as against total savings of a little less than fifteen and a half million. So that would be somewhere between 20 and 25 per cent.

Exhibit 73—Deposition of George L. Young 1101a
Cross Examination

Q. You stated that your source of capital was deposits of investors. Is that the sole source of your capital?

A. I should like to correct you, sir. I did not use the word "deposits."

I have lost your question; I am sorry.

Q. Are there any other sources of capital other than your deposit accounts for investments?

A. None other than our own reserves and surplus.

Q. Now, you indicated that your shareholders either had the savings book, marked Plaintiff's Exhibit 1, or a certificate of like nature as that contained in Plaintiff's Exhibit No. 1, as evidences of their share ownership. What is the distinction between the two?

A. Really very little. Both enjoy the same rights and (29) privileges. The difference is simply this: The book accounts are issued in any amount, and earnings are added to the balance and compounded unless withdrawn. The certificates are issued only in multiples of \$100, and on those the earnings are mailed in the form of a check. Other than that, there is no difference.

Q. What is done with your earnings and profits, your entire earnings and profits? That is, are you a purely mutual organization?

A. We are a purely mutual organization. After the payment of operating costs and allocation to reserves, the balance is distributed in the form of dividends; and actually, of course, the reserves and surplus also belong to the savings account holders.

Q. In other words, they are mutual owners of the association?

A. Correct.

Q. Do you guarantee any interest to any depositors?

1102a Exhibit 73—Deposition of George L. Young
Cross Examination

A. We do not pay interest. Our earnings are distributed in the form of a dividend, and it is not guaranteed. I might add, however, that we have never failed to pay in our sixty-eight years.

Q. Do your shareholders have any right to withdraw their investments on demand?

A. Yes, all are paid on request immediately.

(30) Q. Is there any limitation by the charter or by-laws in reference to their right to receive their investment back on demand?

A. Like every financial institution, our by-laws contain a clause that a thirty-day notice may be required, and they contain further provision in the event of an extreme emergency for requirement of a notice of intention to withdraw.

Q. What is the effect of, say, an extreme emergency where all your depositors or all of your shareholders came at once to withdraw their investments?

A. Well, of course, that is almost a non-believable situation that everyone would request withdrawal at one time. This institution, in addition to—are you referring to our ability to meet our withdrawal requests?

Q. I am referring, frankly, to the nature of your governmental relationship through the Federal Home Loan Bank and the deposit insurance that you have as a member of that system.

A. Well, will you restate your question, please?

Q. How is a shareholder to realize his investment if all your shareholders at once demanded their investments? What is the procedure that you would have to go through and they would have to go through in order to realize back their investment?

(31) A. Through our membership in the Federal Home Loan Bank System, we have readily available to us an amount equivalent to fifty per cent of the ag-

Exhibit 73—Deposition of George L. Young 1103a
Cross Examination

gregate of all the savings accounts, and that, coupled with the cash and government securities that we own, repayments on loans that are due from day to day and week to week and month to month, we would be in a position to meet every substantial demand at any given time.

Q. Mr. Young, assume that you were not liquid enough to meet that demand: What process is necessary?

A. Well, as I have indicated before, there is a requirement or provision that we can require notice of intention to withdraw.

Q. If you receive that and you still cannot meet the liquidity demand made, what is the situation?

A. It can't be beyond the notice of intention to withdraw. If you would like me to quote from the charter on that subject, it says:

"The association shall have the right to repurchase its share accounts at any time, upon application therefor and to pay to the holders thereof the repurchase value thereof. Holders of share accounts shall have the right to file with the association their written applications to repurchase their share accounts, in part or in full, at any time."

(32) Do you want me to go on with it?

Q. In other words, it is in accordance with the plan of repurchase as set forth in paragraph enumerated 12 of Plaintiff's Exhibit No. 3?

A. Correct.

Q. Where do you keep your cash?

A. We use local commercial banks and the Federal Home Loan Bank of Indianapolis, of which we are a member, as depositories.

Q. Do you do any other business in regular course with the local bank?

1104a Exhibit 73—Deposition of George L. Young
Cross Examination.

A. Typically not.

Q. You use them for a depository, primarily?

A. Yes.

Q. Did you or did you not state that a person must be a shareholder in order to obtain a loan?

A. He must not be an investor; need not be.

Q. Need not be an investor. Do you know what percentage of persons for the year 1952 that borrowed from your association were investors or shareholders?

A. I have no such figure.

Q. The amount would be indicated, would it not, on the items appearing on Exhibits 4 and 5 that are entitled "Loans on Savings Accounts"? Those would have to be to shareholders, would they not?

(33) A. They would be. Of course, that is a negligible item.

Q. I see. But as to any other breakdown, you would not have it, is that true?

A. No, sir.

Q. Would you describe the procedure your organization uses upon receiving an application for a loan such as this indicated by Plaintiff's Exhibit 6?

A. Yes. The application is examined as to the credit and income of the applicant; appraisal is made of the real estate offered as security. The entire application is then acted upon by the officers and the committee of the directors, and then the loan is approved or rejected, as they determine.

Q. Do you or did you loan any money for the year 1952 to finance companies?

A. No, sir.

Q. Did you state, or if you did not, do you have the figures as to what percentage of your loans are secured by mortgages on farms and residential properties, for the year 1952?

Exhibit 73—Deposition of George L. Young 1105a
Cross Examination

A. We don't deal in farm property. I indicated that in 1952 we made a total of only five loans that were on other than residential property.

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(34) Q. These questions that I have just asked, and all of these, will pertain to the year 1952, you understand, Mr. Young?

A. I understand.

Q. Did you state that the average interest rate was around five per cent on your loans for '52?

A. On conventional loans.

Q. Conventional loans.

A. Of course, everyone knows the rate on government-insured and -guaranteed loans is somewhat less than that, fixed by statute.

Q. Do you know what the average duration of your loans (35) would be? You stated, I believe, that the majority of them are over ten years?

A. The majority are in excess of ten years, and probably more than ninety per cent of them are in excess of ten years. Probably fifty per cent, at least, run for fifteen to twenty years.

Q. What would you say the average was? At least fifteen years?

A. The average would be in excess of fifteen years.

Q. Now, how are the loans that you make amortized?

A. All of our loans are on a monthly repayment plan.

Q. Do you make any straight mortgage loans?

A. We do not.

Q. Will you describe the nature and extent of the governmental supervision that you are subjected to, and the nature of that supervision and its general purpose?

Mr. Van Zile: Which government?

1106a Exhibit 73—Deposition of George L. Young
Cross Examination

Mr. Dexter: Uncle Sam.

A. Federal Government?

Q. Federal Government, the Farm Loan.

A. Federal Home Loan Bank?

Q. I mean—yes, that is what I meant.

A. We receive complete examination and audit which is made on behalf of the Federal Savings and Loan Insurance Corporation, made by district examiners out of the Federal (36) Home Loan Bank of Indianapolis. We also report to those agencies monthly as to the operations of the institution.

Q. For example, Mr. Young, are your loan plans subject to supervision by the Federal Home Loan Bank?

A. Yes, indeed.

Q. Do they require you to obtain the information and to report to them as to any costs involved on the part of the borrower in obtaining a loan?

A. We are required to keep detailed records of costs charged to every borrower, and those records are examined as a part of the examination I previously referred to.

Q. What would you state was the nature or purpose of such examination and requirement?

A. In regard to loan charges?

Q. Yes.

A. Primarily so that no officer or employee or anyone connected with this institution could make any charge to a borrower for obtaining a loan through the institution.

Q. That would primarily be for the protection of whom?

Exhibit 73—Deposition of George L. Young 1107a
Cross Examination

A. Of the borrower. One of our purposes is to provide low-cost home financing plans to promote home ownership, and one of the ways to do that is to hold down the cost to the borrower.

Q. In other words, that might be considered the purpose of the Federal legislation in the first instance?

(37) A. Yes. I might quote from the charter again:

"The objects of the association are to promote thrift by providing a convenient and safe method for people to save and invest money and to provide for the sound and economical financing of homes."
Those are the functions that we perform.

Q. And did you, in the year 1952, keep that purpose in mind in your activity?

A. We have throughout our entire history.

Q. What agency of the government, if any, insures your stockholders?

A. Our account holders are insured by the Federal Savings and Loan Insurance Corporation.

Q. Now, would you describe the difference between the insurance furnished by the Federal Deposit Insurance Corporation and that furnished by the Federal Savings and Loan Insurance Corporation?

A. They are very similar in nature.

Q. Are there any marked differences that you are aware of?

A. No, sir.

Q. What was the number of employees that you had during the year '52, approximately?

A. Well, I think I can tell you that. No, I am sorry, I do not have a record here of our employees at that time, (38) but I would say they were approximately fifteen; that is, in the operation of the association other than employees of the building.

1108a Exhibit 73—Deposition of George L. Young
Cross Examination

Q. Mr. Young, you stated that the only taxes you paid to the State of Michigan for the year 1952 were intangibles tax, is that correct?

A. Yes, sir, plus the unemployment.

Q. Plus unemployment tax. Have you received any clearance by the Michigan Department of Revenue for the 1952 tax, or been audited in reference to it?

A. No.

Q. But when you made the statement you meant to the State of Michigan, not including taxes to the local unit, is that correct?

A. That is correct.

Q. What taxes have you paid in addition to the intangibles tax and the Workmen's Compensation tax, to any unit of government other than the Federal Government?

A. Well, we pay to the City of Grand Rapids on real property taxes.

Q. Do you have that amount for the year 1952?

A. I doubt if it is indicated as a separate item, although I will check. I don't have it available here. I can get it for you if you want it.

Q. Could you get that information for us; that is, all (39) your local taxes of any kind or character whatsoever?

Mr. Van Zile: Off the record.

(Discussion off the record.)

Q. Are the Federal taxes you pay computed in the same manner as banking association taxes?

A. If my memory is correct, it was in 1952 that Federal savings and loan associations became subject to Federal income tax in the same manner as any type of corporation, with the exception that we have an exemption of up to twelve per cent of the total of our savings accounts; that is, our reserves and surplus.

Exhibit 73—Deposition of George L. Young 1109a
Cross Examination

must equal or exceed twelve per cent under some conditions. Now, that gets into quite another subject. We are subject to Federal income tax, and were in '52.

Q. And, generally, there is a difference between the way you are taxed and the way other banks are taxed, is that correct?

A. I just said there was no difference except in the method of allowances for reserves.

Q. There is a different method used there. Mr. Young, are you aware of the provisions of the Federal law creating Federal savings and loan associations with respect to their taxation by states?

A. Would you restate that, please?

Q. Are you aware of the provisions of the Federal law creating Federal savings and loan associations with respect (40) to their taxation by states?

A. My recollection is that the Federal legislation says that a Federally-chartered savings and loan association may be taxed by a state, but in an amount not to exceed state-chartered institutions of the same type.

Q. Do you have any way of knowing what the market value of your shares was in 1952?

A. Market value is always maintained at face value.

Q. It is always at face value?

A. If you would like to know our book value, it would have been about—our reserves and surplus were equivalent to about ten per cent of the total of the savings accounts.

Q. Mr. Young, some of this will be repetitions, but I would like to ask you if, for the year 1952, you did any of the following: One, issue letters of credit?

A. No, sir.

Q. Two, issue traveler's checks?

1110a Exhibit 73—Deposition of George L. Young
Cross Examination

A. We offered American Express traveler's checks.

Q. But that is the extent of it, traveler's checks?

A. We don't offer any of our own, no, sir.

Q. Purchase or sell securities on order of customers?

A. We do not.

Q. Collect notes or drafts for customers?

A. No—well, in the sense that you ask the question, I think the answer is no.

(41) Q. Mr. Young, is there any limitation on the total amount any one person may invest, or the dollar amount of any shares he may purchase?

A. There is no limitation fixed. There is a limit to (42) the number of votes that any one person could have, regardless of the size of his account. It is limited to fifty. In other words, each savings account holder is entitled to one vote for each \$100.00 or portion thereof, not to exceed fifty.

Mr. Dexter: That is all that I have, Mr. Young. Thank you very much.

Mr. Cudlip: Mr. Young, I should like to ask you a few questions.

Cross Examination (Continued)

By Mr. Cudlip:

Q. Plaintiff's Exhibits 4 and 5 are your 64th and 65th annual statements of condition for the years ended 1951 and 1952, respectively. In the year ended 1951, out of total assets of just a little over \$15,000,000 you report first mortgage loans of a little over \$12,000,000?

A. Yes, sir.

Q. Twelve-fifteenths in mortgage loans. Then, there are some relatively unimportant items, until we come to investments and securities in the amount, for 1951,

1.

Exhibit 73—Deposition of George L. Young 1111a
Cross Examination

of \$1,739,000-odd. What was the nature of those investments and securities, in general?

A. They were primarily United States Government (43) obligations. I think in that particular statement, included in that item of investments and securities is Federal Home Loan Bank stock owned, which you will notice in the other exhibit is indicated as a separate item.

Q. Then, in 1952, according to your statement issued at the end of that year, you changed the form of the statement somewhat, but your first mortgage loans are reported as being slightly in excess of \$13,000,000 out of total assets of somewhat in excess of \$17,000,000?

A. Yes, sir.

Q. And there, to restate what you have said, you have indicated what the amount of United States Government bonds held by you was at that time; namely, \$1,620,000-odd?

A. Yes, sir.

Q. Just a different form of reporting for that year as compared with the previous year?

A. That is correct.

Q. Are these savings memberships or share memberships, memberships evidenced by a share of stock as described in your Constitution and By-Laws, transferable?

A. Yes.

Q. Assignable to anybody?

A. Upon giving notice to the association, it could be assigned.

Q. Is your assent required?

(44) A. Before it is effective.

Q. Yes. What is the average interest rate, just approximately, for '52—And all my questions, Mr. Young, are directed to the year of '52 unless I indicate otherwise—on the VA and FHA loans that you indi-

1112a *Exhibit 73—Deposition of George E. Young*
Cross Examination

cate? You stated that the rate normally on the direct conventional loan is five, and you stated that for the reasons stated by you the rate on the FHA and VA is less. What would it be?

A. My recollection is that in 1952 the rate on VA loans was four per cent, and on FHA loans four and a quarter. Now, there have been some changes in those rates and I am not positive as to '52, but that is my recollection.

Q. Yes, that is all right. Are you examined or supervised directly by the Home Owners' Loan Corporation, as distinguished from your statement that you are examined out of Indianapolis, the Home Owners' Loan Bank, by their representatives for the government agency that insures the shareholders of your institution?

A. Well, the examination and audit, I believe, is for the Federal Home Loan Bank and the Federal Savings and Loan Insurance Corporation.

Q. Well, the board in Washington, the Home Owners' Loan Corporation—

A. Understand, they are both under the Federal Home Loan Bank Board in Washington, and it actually is for their (45) purpose.

Q. My question was: Is there a separate examination for the Home Owners' Loan Corporation as distinguished from the insurance agency, as distinguished, perhaps, from the Home Owners' Loan Bank in Indianapolis?

A. Well, sir, you use the word "Home Owners' Loan Corporation." Understand that we have nothing to do with the Home Owners' Loan Corporation, or they have nothing to do with us.

Q. Well, they chartered you?

Exhibit 73—Deposition of George L. Young 1113a
Cross Examination

A. Yes, but it happened to be under that broad act and under a certain section of it; Section 5, I believe it was. But we are supervised by the Federal Home Loan Bank Board of Washington, D. C., and the district banks, of which we happen to be a member of the Indianapolis bank.

Q. Well, all I am trying to arrive at is, how many examinations and by whom—how many examinations are made?

A. Just one.

Q. And by whom?

A. They are made by the district examiner of the Federal Home Loan Bank of Indianapolis.

Q. Is that annually?

A. It is intended to be annually. Sometimes it goes a little beyond a year; it could be a little less.

Q. You were talking, testifying, concerning taxes (46) paid by you, and it is my understanding that later on we will receive a list of the taxes paid by you to all instruments of government: Federal, state and local. But I would just like to ask you this: In addition to taxes that you said you paid, you probably paid, did you not, a personal property tax to the City of Grand Rapids?

A. No, I think not.

Q. On furniture, fixtures?

A. No, I think not.

Q. Are you exempt?

A. Apparently so.

Q. Do you pay a school district and county tax on your real estate as well as a county tax to the City of Grand Rapids?

A. Yes.

1114a Exhibit 73—Deposition of George L. Young
Cross Examination

Q. Do you pay a privilege fee to the State of Michigan in addition to the tax that the shareholders pay on their shares?

A. We currently do, although that was not true in 1952.

Q. Do you pay a Federal income tax?

A. We are subject to a Federal income tax.

Q. Well, you pay it, of course, if you are subject to it?

A. Well, if we are taxable.

Q. Yes. I take it from your statement of position that (47) you are taxable. With respect to this agency that insures the shareholders of this institution, that is known, I believe, as the Federal Savings and Loan Insurance Corporation?

A. Yes, sir.

Q. Has that entity any relationship to the Federal Deposit Insurance Corporation, which insures banks?

A. They are entirely separate corporations.

Q. Now, under your articles, by-laws, constitution, et cetera, you have the right to repurchase members' shares, is that correct?

A. Yes, sir.

Q. And if you are not able to repurchase those shares, you have the right, as I understand your contract with your shareholders, to invoke what is normally called a "take-your-turn" provision; that is to say, a right to specify what percentage you will pay out if they want their shares re-acquired; is that correct?

A. Not quite. The amount that has to be allocated toward those requests is fixed.

Q. By the—

A. By the charter and by-laws, regulations.

Exhibit 73—Deposition of George L. Young 1115a
Cross Examination

Q. But if you are unable to purchase the shares in event of an emergency, trouble, panic of some kind, does the insurance agency come into the picture then, take over the institution and pay the shareholders up to the amount of (48) \$10,000, or are there some other steps that must be taken before that happens on the part of the insuring agency?

A. Before the insurance corporation would act, the institution would have to be declared to be in default.

Q. And are you in default as long as you are applying the stipulated percentage of your receipts to the repurchase of the share accounts in the numerical order?

A. Not necessarily.

Q. Did your stockholders, at their meeting in 1952, adopt resolutions expressly authorizing the directors and officers of this institution to carry on the type of business that you have been describing in the testimony this afternoon?

A. By inference, at least, in that they—

Q. Mr. Young, I said by express resolution.

A. By resolution approving the acts of the officers and directors in the preceding year's operation.

Q. On your window you have a sign; maybe I am not quoting it correctly but it says, "Specialists in Real Estate Loans," is that correct; words to that effect?

A. I am not sure whether it says real estate loans or home loans. Something with that application.

Q. Or home loans. What message are you intending to carry to the public by that good advertisement?

A. That this is a source of home financing.

Q. And by the word "Specialist"?

(49) A. That that is our sole function as far as lending is concerned.

1116a Exhibit 73—Deposition of George L. Young
Cross Examination

Q. You spoke about the character of your obligations, real estate mortgages that you receive, and the duration of them, and the interest rate on them, et cetera. What was the situation in the real estate mortgage market here in 1952 as respects the relationship between supply of money for loans of the kind you described and the demand therefor?

A. I would say the demand could, any time in 1952, have exceeded the available supply.

Q. And in the Grand Rapids, Greater Grand Rapids, area which you referred to?

A. Yes, sir.

Q. On the balance sheets of this institution for the years '51 and '52, Exhibits of Plaintiffs marked 4 and 5, there is a reference on the liability side to savings accounts in each case. Those are the same as the share accounts as described in your charter and by-laws, are they not?

A. Yes, sir.

Q. Why don't you call them that in your published statement?

A. "Savings accounts" is probably a more readily understood term, it is approved language, and—

Q. Don't you think people understand what the word "share" means?

(50) A. Perhaps some of them do.

Q. Your loan application is Plaintiff's Exhibit 6. What is meant by the word "Deposit," "\$" after the word, "Date," in the middle of the application

A. That is for deposit of an application fee; typically, an amount sufficient to cover the cost of having an inspection made of the property.

Q. Do all Federal savings and loan associations operate under identical plans, or are there options and alternatives permitted by the charter or by the statute?

Exhibit 73—Deposition of George L. Young 1117a
Cross Examination

A. There are at least two approved charters with slight variations, essentially the same as far as charter, by-laws, rules and regulations. There are, of course, differences in operating policies within those charters.

Q. Now, as I understand it, an individual or any entity can purchase shares in this corporation, and he does not have to borrow money here if he doesn't want to; is that correct?

A. Yes, sir.

Q. And, I also understand, that I don't have to be a shareholder and yet if I pass muster I can borrow money on your conditions?

A. After becoming a member, yes, sir.

Q. Well, I am automatically a member if you approve me?

A. Yes.

(51) Q. By virtue of being a borrower?

A. Yes.

Q. Now, Mr. Van Zile asked you what the relationship was between your shares, corporation shares, and the shares of other corporations, and your answer was substantially to the effect that your shares were more akin to bank deposits.

Do you regard all these people that own shares of this institution as creditors of this institution?

A. They are the only people to whom the institution has an obligation.

Q. As a debtor?

A. They are actually members under the law. I said that it was closer to a bank deposit than it is to a typical corporate share.

Q. Would you agree that a bank regards a depositor as a creditor and itself as a debtor?

A. Yes.

1118a *Exhibit 73—Deposition of George L. Young*
Cross Examination

Q. Do you regard yourself as a debtor and all of these shareholders as creditors of this institution?

A. We feel a very definite obligation to return their money when they want it.

Q. As shareholders or as creditors?

A. Technically, they are shareholders.

Q. Well, actually, are they not shareholders?

A. Yes, sir.

(52) Q. What was your answer?

A. Yes.

Q. And not creditors?

A. Correct.

Q. Your well-drawn by-laws and articles provide, among other things, that the shares can be redeemed; do they not so provide?

A. Yes, sir.

Q. And they also provide that the shares can be repurchased by the institution; is that correct?

A. Yes, sir.

Q. They also provide for a bonus and a bonus reserve. Would you briefly describe what that means with reference to these shareholders?

A. Well, we have never used that provision in this institution. I think the intent is that there can be an arrangement where accounts that are left for a given period of time can be paid a rate different than holders of a shorter duration.

Q. Sort of an incentive plan?

A. Yes. As I said, we do not use it.

Q. A borrower here has a vote to some extent just like an owner of shares, is that correct?

A. Yes, sir.

Q. What is the ratio as between the two in voting
(53) power per dollar?

Exhibit 73—Deposition of George L. Young 1119a
Cross Examination

A. A borrower has one vote. I previously stated that the holder of a savings account can have one vote for each hundred dollars or part thereof not to exceed a total of fifty votes.

Q. This institution is limited in its outside borrowing power, is it not?

A. Limited?

Q. Limited as to the amount it can borrow outside, from banks or others?

A. I know of no limitation.

Q. Can you borrow an unlimited amount of money on the outside, assuming you could get it?

A. Well, because we are not interested in borrowing money, I don't have in mind just what the provision is on that subject. We are not borrowers of any money.

Q. I was referring to Paragraph 8 of your charter. If I read it correctly, you have the power to obtain advances of not more than an amount equal to one-half of your share capital on the date of the advance?

A. Well, I was familiar with that provision, and I see in reading on in that, that it does state that from other sources in an amount not to exceed ten per cent.

Q. Yes; I didn't mean to just read part of it. I was just talking about the general principle of some limitations.

(54) A. Yes, there is a limitation.

Q. Now, your contract with the shareholder is contained in the charter and by-laws? It may be expressed in other places, but this is the contract?

A. Yes.

Q. And it speaks, of course, about his rights and duties and your rights and duties. It is true, is it not, that the contract does impose numerous conditions or conditions, at least, on the withdrawal of shares; that

1120a Exhibit 73—Deposition of George L. Young
Cross Examination

is, on the return of money to a stockholder? He just can't come in arbitrarily and get his money at all times without rights on your part to say no if you choose to under certain conditions?

A. I think that is true of all types of savings accounts in all types of financial institutions.

Q. Well, when you say "financial institutions," are you referring to a commercial deposit in a commercial bank?

A. I said all types of savings accounts in all types of savings institutions. Savings accounts in a commercial bank are subject to some—

Q. Are you sure of that?

A. I think that is typically true, yes, sir.

Q. But are you willing to swear that that is the case in every instance?

A. I wouldn't be willing to say in every one, no.

Q. Do you have the legal power to sell money orders, (55) American Express or Mellon or any other kind?

A. I think that that has been authorized, to sell money orders, as incidental to the business. It has been approved by Federal Home Loan Bank regulation.

Q. Would you just describe briefly the purpose of the Home Owners' Loan Bank; and I believe our branch in this district is at Indianapolis and you are a member of it, you stated?

A. Yes, sir. The purpose of it?

Q. Just tell us, briefly, the nature, the reason for it, and its function.

A. The Federal Home Loan Bank acts as a reserve credit bank.

Q. I am sorry; go ahead, sir. I am listening.

A. The Federal Home Loan Bank is a reserve credit bank, yet acts as a depository for cash of its members.

Exhibit 73—Deposition of George L. Young 1121a
Re-direct Examination

It also makes advances to its members on their note, either secured or unsecured, as the bank determines.

Q. Would it be fair to say that that system parallels the Federal Reserve System for the members thereof, which are state and national banks?

A. To a great degree.

Mr. Cudlip: That is all from me.

Mr. Van Zile: May I ask a couple of questions.

Mr. Cudlip: Are these exhibits offered?

(56) Mr. Van Zile: They will be offered with the deposition.

(Further discussion off the record.)

Re-direct Examination

By Mr. Van Zile:

Q. Now, as I understand it, Mr. Young, customarily, I believe you said, in your entire experience with the association, your savings account holders who are members, have been permitted to withdraw upon demand; is that right?

A. Almost without exception. There was a period at the time of the banking holiday when the notice was invoked.

Q. But except for that period, they have been permitted to withdraw upon demand?

A. Yes, sir.

Q. And the amount that they are paid upon demand, as I understand it, is the amount shown in their pass-book or account book?

A. Credited to their account, yes.

Q. That is, the amount they have invested plus the earnings credited?

A. Credited earnings, yes, sir.

Q. As I understand it, the only difference between the separate savings certificate and the one that appears

1122a Exhibit 73—Deposition of George L. Young
Re-direct Examination

in the account book is that the separate savings certificate (57) is in multiples of a hundred and the dividends are forwarded to the shareholder by mail?

A. Yes, sir.

Q. Other than that, they are identical?

A. Yes.

Q. Now, you said in answer to Mr. Dexter's question that on occasions you—strike that.

In answer to Mr. Dexter's question when he asked you whether you collected notes and drafts for customers, you said something—I think you said, "In some sense we do, but normally not"?

A. I think I said in the sense that I thought he was asking the question, we did not. I was mindful of the fact that we do have some land contracts left with us which we collect for our borrowers, typically.

Q. I see.

A. When they have resold the property under a land contract they sometimes have the land contract purchaser bring his money here for credit to the contract and mortgage.

Q. All right. Now, do you always record your real estate mortgages?

A. Yes, sir.

Q. And do the mortgages so recorded reflect the amount of the loan?

A. Yes.

(58) Q. Do you permit your shareholders to vote by proxy?

A. They may.

Q. Do they usually?

A. Usually they do not.

Q. Are you a member of the Grand Rapids Clearing House?

Exhibit 73—Deposition of George L. Young 1123a
Re-cross Examination

A. We are not.

Q. Do your customers deposit checks with you, checks drawn on other institutions?

A: Yes, we use the commercial bank in the same way anyone else does.

Q. In other words, you accept the deposit and take it to the bank for collection?

A. For credit to our account.

Q. For credit to your account?

A. Yes.

Q. And the bank, in turn, collects it?

A. That is right.

Q. Could I ask you one other thing while you have your records there, Mr. Young. Do you happen to know what your savings accounts totaled in 1946? Do you have that figure available there?

A. Yes. 1946, the amount was \$8,267,241.13.

Mr. Van Zile: Thank you. I have no further questions.

Mr. Dexter: May I, with Mr. Van Zile's permission, (59) ask a couple questions.

Re-cross Examination

By Mr. Dexter:

Q. I was wondering, Mr. Young: You stated in reference to your shareholders that it included all classes of people as far as economic strata is concerned. Do you know what the circumstance is in reference to your borrowers? Generally, what class of people do you deal with as far as their economics?

A. People of good moral character.

Q. But as far as their economic position, are you dealing with a certain group of people, primarily?

1124a Exhibit 73—Deposition of George L. Young
Re-cross Examination

A. No, we deal with the general public.

Q. What do you believe attracts people to your doors for these home mortgages?

A. Services, favorable terms.

Q. What do you mean by "favorable terms"?

A. You are speaking now of the borrowers?

Q. Borrowers, yes, sir.

A. Our mortgages are written on favorable terms as to initial cost, as to length of maturity, as to interest rate, as to repayment privileges.

Q. You make those statements in reference to the conditions that might be present if they were trying to obtain, (60) say, a home loan from some other institution?

A. Yes.

Q. Generally, was there, to your knowledge, for the year '52, any difference in terms of your loan value as to market value of real estate, for example, and that of other institutions that might loan money on the same type of property?

A. The question was as to value of the property?

Q. Yes, the amount of loan as to the value of the property.

A. I would say that we are more conservative than some. Perhaps there are others who are more conservative than we. There are differences, of course, in individual cases, perhaps; a person's view of the value of a given piece of real estate.

Q. Then, you would say that there was probably no established policy difference between your organization and other financial institutions in regard to the amount that they would loan on a piece of real estate for the year '52?

Exhibit 73—Deposition of George L. Young 1125a
Re-cross Examination

A. If you are leading to the question of whether we would outbid other lenders, the answer would be definitely no.

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(61) *Re-cross Examination (continued)*

By Mr. Cudlip:

Q. During the year '52, Mr. Young, did you always exact the maximum rates and charges that you might have legally exacted on your FHA and VA Program loans?

A. Maximum rates and charges?

Q. Yes, the maximum permissible rates and charges on those two types of loans. Did you always exact them?

A. No, I would say that we did not exact the maximums.

Q. Was that because of policies dictated by the competitive nature of your business?

A. No. It is a little difficult to recall '52. Under either of those programs, the lender is entitled to charge a one per cent service fee on existing property, and a two-and-a-half per cent fee on a construction loan under those loan programs. There was a time—and I don't recall '52—when we did not charge either of those. I would be inclined to think that in '52 we were charging the one per cent, but we never did charge the two-and-a-half on construction loans.

Q. Do you employ solicitors to obtain business for you?

A. We do not.

Q. Do you sell your mortgages to other financial institutions?

A. We never have sold a mortgage in our history.

(62) Q. Do you act as agent for servicing mortgages for other institutions?

A. We do not.

EXHIBIT 73-E

65th ANNUAL STATEMENT OF CONDITION

Grand Rapids Mutual Federal Savings and Loan
Association

Grand Rapids, Michigan

December 31, 1952

Assets

Cash on Hand and in Banks.....	\$ 1,943,926.17
United States Government Bonds.....	1,620,762.50
Stock in Federal Home Loan Bank.....	300,000.00
First Mortgage Loans.....	13,180,745.45
Loans on Savings Accounts.....	15,251.98
Properties Sold on Land Contract.....	57,009.06
Office Building and Equipment (Less Depreciation)	175,955.21
Deferred Charges and Other Assets....	1,343.20
Total Assets	\$17,294,993.57

Liabilities

Savings Accounts	\$15,496,286.43
Loans in Process.....	160,730.44
Other Liabilities	63,822.55
Specific Reserves	18,758.10
General Reserves	\$801,863.24
Surplus	753,532.81
	1,555,396.05

Total Liabilities \$17,294,993.57

EXHIBIT 75-A

60th ANNUAL STATEMENT OF CONDITION

Grand Rapids Mutual Federal Savings and Loan
Association

Grand Rapids, Michigan

December 31, 1947

Assets

First Mortgage Loans.....	\$6,552,436.60
Loans on Passbooks and Certificates....	9,084.55
Other Loans	5.00
Properties Sold on Contract	379,332.52
Real Estate Owned	6.00
Stock in Federal Home Loan Bank.....	200,000.00
United States Government Securities....	2,395,557.03
Cash on Hand and in Banks.....	217,495.57
Office Building and Equipment, Less Depreciation	193,201.00
Furniture and Fixtures	1.00
Other Assets	80.00
	<hr/>
	\$9,947,199.27

Liabilities

Members' Share Accounts.....	\$8,716,066.63
Advances from Federal Home Loan Bank	None
Borrowed Money	None
Loans in Process	220,249.90
Other Liabilities	7,330.90
Specific Reserves	54,299.67
General Reserves	\$469,853.03
Undivided Profits	479,399.14
	<hr/>
	949,252.17
	<hr/>
	\$9,947,199.27

EXHIBIT 77

(1) Mr. Butzel: I would like to make some stipulations. It is stipulated by and between counsel for the respective parties that this deposition may be taken by agreement of the respective counsel for the respective parties with the consent of the witness; that the reading and signing of the deposition by the witness are waived; and may there be a stipulation between counsel that a general objection will be entered on behalf of each of the parties to any of the line of testimony introduced here, is that correct, Mr. Dexter?

Mr. Dexter: That is correct. Our objection is more general than yours would be. We object to the materiality and relevancy of any testimony that Mr. Swanson would give at all.

Mr. Butzel: If that is understood, I guess we can proceed.

SWANSON, MR. HAROLD O., being first duly sworn by the notary to tell the truth, the full truth, and nothing but the truth, was examined, and testified as follows:

Direct Examination

By Mr. Butzel:

Q. Mr. Swanson, will you give your full name, please?

A. Harold O. Swanson.

Q. Where do you live?

A. 1326 Underwood Avenue Southeast, Grand Rapids, Michigan.

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Exhibit 77—Deposition of H. O. Swanson 1129a
Direct Examination

(2) Q. Mr. Swanson, what is your position with the Mutual Home Federal Savings and Loan Association?

A. President and a director.

Q. How long have you been president and director?

A. I have been a director since February, 1950, and president since January 18, 1956.

Q. How long have you been employed by the Association?

A. Since September, 1936.

Q. Where is your Association located?

A. 86-88 Market Avenue Northwest, Grand Rapids, Michigan.

Q. How long has the Association been here?

A. We have been in this location since 1922.

Q. And prior to that time, where were you located?

A. Immediately prior to that time we were in the so-called Commercial Savings Bank Building, 201 Monroe Avenue, from 1916 to 1922.

Q. Your offices have always been in Grand Rapids, have they?

A. That is right.

Q. Is your Association a Federal Association?

A. Yes, sir.

(3) Q. Is it currently so?

A. It is.

Q. Is it organized under the Federal Home Loan Act?

A. That is right.

Q. When was it so organized?

A. 1935—wait a minute, excuse me—you say when was the Association organized?

Q. Yes, when was it so organized?

A. It was originally organized December 12, 1888.

Q. That was under a State Act?

1130a • Exhibit 77—Deposition of H. O. Swanson
Direct Examination

A. A State Charter.

Q. When did you secure a Federal Charter?

A. On December 18, 1935.

Q. —at which time you gave up your State Charter, is that correct?

A. That is correct.

Q. And since that time you have always been a Federal Association?

A. That is right.

Q. Do you have any branches?

A. No, sir.

Q. You have just this one office?

A. That is right.

Q. In what general area does your Association do business?

A. In Grand Rapids and immediate vicinity—and by that, (4) I mean the adjoining six townships and communities.

Q. How about the location geographically of your members, people who own your shares?

A. Our members are principally located in this area but we do have members throughout Michigan and other states of the Union.

Q. Percentagewise, is it large?

A. Just a small percentage are outside of the immediate area.

Q. In the subpoena that was served upon you, you were asked to bring with you certain books and records. Do you have a copy of your Articles, Charter, By-laws, your pass books?

A. I have.

Q. May I see your Charter, please?

A. Yes.

Exhibit 77—Deposition of H. O. Swanson 1131a
Direct Examination

Q. How about the savings book; do you have a mortgage book too?

A. Yes, sir.

Q. I will hand you Exhibit 1, and ask you to identify that, please.

A. Exhibit 1 is the Charter and By-laws of the Mutual Home Federal Savings and Loan Association of Grand Rapids, Michigan.

Q. I will hand you Exhibit 2, and ask you to identify it.

(5) A. Exhibit 2 is the Loan Account Book for our direct monthly reduction loans.

Q. Exhibit 3 is what?

A. Exhibit 3 is our Savings Account Book.

Q. Now Exhibit 1 is your Charter and By-laws, is that correct?

A. That is right.

Q. And they prescribe the conditions under which your Association operates?

A. That is right.

Q. Are these the same as were in existence in 1952?

A. That is right.

Q. How does your Association obtain its capital?

A. By accepting savings accounts from members.

Q. How are your shareholders or members represented, Mr. Swanson?

A. By savings passbooks and savings certificates.

Q. Is the certificate of membership to this contained in these books? (referring to Exhibits 2 and 3)

A. Yes, the certificates of membership is in both the savings book and the loan account book.

Q. Do the members get any other type of certificate representing their interest in the Association?

A. No, sir.

1132a Exhibit 77—Deposition of H. O. Swanson
Direct Examination

Q. How many types of members do you have in your (6) Association?

A. Two types, savings members, and borrowing members.

Q. No others?

A. No others.

Q. How much must be invested to open an account and obtain a membership?

A. One dollar.

Q. Anything more than one dollar?

A. Not required.

Q. How large an investment can be made?

A. Presently, as well as in 1952, there wasn't any limit.

Q. Are investments accepted at any particular time?

A. They are accepted at all times.

Q. At all times?

A. Yes.

Q. Do they have to be made in any specific multiples?

A. Not on the savings books, but in the case of savings certificates, the investment must be made in multiples of \$100.00.

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(7) Q. I will show you what has been marked Exhibit 4 and ask you what that is?

A. Exhibit 4 is the financial statement of the Mutual Home Federal Savings and Loan Association as of December 31, 1951.

Q. That correctly states the assets of your Association on that day?

A. It does.

Q. Now I show you Exhibit 5 and ask you what that is?

Exhibit 77—Déposition of H. O. Swanson 1133a
Direct Examination

A. Exhibit 5 is the financial statement of the Mutual Home Federal Savings and Loan Association as of December 31, 1952.

Q. Does that likewise correctly represent the correct condition on that date?

A. It does.

Q. Were both of these reports published?

A. They were, as well as being mailed to the membership.

Q. In the description of liabilities in both statements, I notice this term Savings Accounts. Does that consist of investments of your shareholders?

A. It does.

Q. Is that what it is meant to describe?

A. Yes.

Q. And that insofar as each shareholder is concerned (8) that information would be reflected in the savings book, Exhibit 3, is that correct?

A. Yes, and the certificates.

Q. And also the certificates?

A. Yes.

Q. All right, turning to these again, under Assets, there are three items, First Mortgage Loans, Loans on Savings Accounts, and Properties sold under Contract. Do these items represent indebtedness due from various borrowing members?

A. Yes.

Q. And those, I assume, would be reflected in Plaintiff's Exhibit 2?

A. Yes, sir, except that a slightly different type of book is given to the purchasers on land contract.

Q. In which way would it differ?

A. Just in color.

Q. But the contents would be the same?

1134a Exhibit 77—Deposition of H. O. Swanson
Direct Examination

A. The contents are the same.

Q. Why do you have a different color, for ease of the tellers?

A. We have different colors for various types of loans in order to help tellers identify the account readily.

Q. Could you give me the number of savings members that you have as of December 31, 1951, and also as of December 31, 1952?

(9) A. Savings members on December 31, 1951, were 5408. Savings members December 31, 1952 were 5702.

Q. Mr. Swanson, could you tell me what the difference might be between your shares and those of a commercial corporation or commercial bank?

A. There is a difference in this respect that our savings account and shares are more like a bank deposit than a share in a commercial corporation.

Q. In other words, it is like a savings account deposit?

A. We call them investments but it is a savings account investment.

• • • • •

Q. Could you tell me whether your savings members come from any particular economic class in Grand Rapids, any particular income class, such as high income or—

A. Our savings accounts members are from all walks of life, from the low income group to the higher income group.

Q. Would you say it is a cross section of income levels?

A. Yes, sir.

Q. And do you secure that information from the financial applications or in what way do you secure the information in connection with that?

Exhibit 77—Deposition of H. O. Swanson, 1135a
Direct Examination

A. Insofar as the loans are concerned, we have it from written information on our loan application. In the case of savings members, we don't have their occupations except that from our own knowledge and acquaintance with many of them, we know they (10) are from all income groups.

Q. In other words, the size of your organization is such that there is a certain intimacy between the officers and the members and you know generally their backgrounds?

A. That is right.

Q. Considering the withdrawal rights for savings members, are there any conditions normally imposed by your Association on withdrawal rights?

A. Not under normal conditions.

Q. How are dividends on your shares determined?

A. Dividends are declared by the board of directors twice a year, in December and in June, for payment at the end of those respective months after payment of the operating expenses and proper allocations for reserves.

Q. Would you say that the income of the Association was the dominant factor in determining what dividend rate will be paid?

A. Yes, sir.

Q. After the dividends are declared, how are they paid, Mr. Swanson?

A. In the case of the savings books, the dividend is added to the book, and is subject to withdrawal by the member. Otherwise the dividend remains and compounds. In the case of the savings certificate, the dividend is mailed by check on December 31st and June 30th.

(11) Q. In other words, the dividends can either be taken in cash or they can be credited at the option of the member, is that correct?

A. That is right.

1136a Exhibit 77—Deposition of H. O. Swanson
Direct Examination

Q. What was the dividend rate in 1952, Mr. Swanson?

A. Two and one-half percent per annum.

Q. Mr. Swanson, if a savings account is withdrawn before the dividend period, do you pay on any accrued interest or do you pay any accrued dividend?

A. No, the dividend is payable only on those funds that remain on hand at the dividend date.

Q. At the dividend date?

A. That is correct.

Q. You loan only to members?

A. That is right.

Q. What procedure do you follow when a person seeks to borrow from your Association?

A. We take a formal application from the borrower, which describes the property that is offered as security, and we appraise the property, obtain a credit report from local commercial credit rating agencies, as well as our own personal investigation before determining whether the loan should be made.

We also have the applicant sign an application for membership prior to closing the loan.

.

(12) Q. I show you Exhibit 8 and ask you what that is?

A. Exhibit 8 is an application for membership for a savings account in the Mutual Home Federal Savings and Loan Association.

Q. On one side I notice it appears to be "individual", and (13) on the other side "joint", is that correct?

A. That is correct.

Q. I hand you Exhibit 7, and ask you what that is?

A. Exhibit 7 is an application for membership for a proposed borrower on a mortgage loan.

Exhibit 77—Deposition of H. O. Swanson 1137a
Direct Examination

Q. I show you Exhibit 6 once again, and ask you what that is.

A. Exhibit 6 is a detailed application for the loan giving a brief description of the security offered and employment and personal information regarding the applicant.

Q. In other words, this is the basis from which you start your investigation for a proposed borrower?

A. That is right.

Q. Mr. Swanson, what types of collateral are taken for your loans?

A. First mortgage loans on residence property principally and I mean by that, on one to four family properties. There are a very few loans made on other than residential property falling in that category.

Q. I notice from your financial statements which have been placed in evidence here, you have a figure for loans on savings accounts. What sort of a loan is that?

A. That is a share loan note that we take from investors who wish to obtain some of their funds without actually making a withdrawal. It is typically used in the several weeks (14) immediately preceding the dividend date when the borrower doesn't wish to disturb his dividend and would rather pay us a little interest on his loan—or share loan note.

Q. Is there a form representing that note?

A. There is.

Q. May that be identified as Exhibit 9?

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Q. Purely for purposes of the record, this is the instrument that you were talking about just a moment before, is that right?

A. That is right.

Q. Now you said that you took certain collateral and you explained that was residential real estate?

1138a Exhibit 77—Deposition of H. O. Swanson
Direct Examination

A. That is right.

Q. Also, a savings account holder could borrow against the value of the balance of his account giving a note for that?

A. That is right.

Q. So that at the time a loan is granted, it may be necessary to fill out a membership application, the nature of which you have shown, as well as an application for a loan, is that correct?

A. That is right.

Q. Were all of these forms in use in 1952?

A. Yes, sir.

(15) Q. Do you have any savings account members or borrowing members other than individuals?

A. Yes, we do. We have a few loans to corporations and a few loans to business, a few savings accounts to business.

Q. Partnerships?

A. Partnerships, credit unions, fiduciaries, trustees, and so forth.

Q. That was true in 1952?

A. Yes, sir.

Q. All right now, on Exhibits 4 and 5, your financial statements for the two years, there is an asset described as property sold on contract. Would you describe what these assets consist of?

A. These are properties that were acquired by the Association as the result of foreclosure of defaulted mortgages and have been resold on land contract.

Q. What types of property are they?

A. They are all residential properties.

Q. Do you make any loans without collateral?

A. Yes, FHA home improvement loans.

Q. Did you do that in 1952.

A. Yes, in a small amount.

Q. On your financial statement under assets are listed, of course, first mortgage loans. These are loans, I assume, for which the borrower has to make out an application for a loan and (16) an application for a membership, is that correct?

A. That is right.

Q. On what types of property are these loans made?

A. Principally on one to four family residences.

Q. I think you said occasionally loans were made on commercial property?

A. Yes.

Q. Do you have any estimate percentagewise?

A. It is a very small percentage. Actually in 1952, we didn't make any loans on commercial properties but we did have on our books loans made in the two preceding years for the original amount of \$110,000.

Q. Do you have a record of the mortgages which you have taken during the period from 1946 to 1952?

A. Yes, sir.

Q. Do you have that in terms of numbers?

A. Yes, and amounts.

Q. Amounts and total amount?

A. That is correct.

Q. All right, could you give me those figures for the year 1946?

A. In the year 1946 we made 602 mortgage loans totalling \$2,522,545.72.

Q. And in 1947, please?

A. We made 526 loans totalling \$2,066,536.99.

(17) Q. And in 1948?

A. We made 490 loans for \$1,893,763.25.

Q. In 1949?

A. We made 455 loans for \$1,829,652.88.

Q. In 1950?

A. We made 585 loans for \$2,890,038.57.

1140a Exhibit 77—Deposition of H. O. Swanson
Direct Examination

Q. In 1951?

A. We made 570 loans for \$2,930,598.50.

Q. And in 1952?

A. We made 636 loans for \$3,609,419.56.

Q. Now I understand you have a typewritten summation of those figures?

A. I have.

Q. Where were those figures taken from?

A. The Records of the Mutual Home.

Q. May I have a copy here?

A. Yes, sir.

Mr. Butzel: I would like that identified.

(Plaintiff's Exhibit 10 was marked by the reporter at this time.)

Q. Exhibit 10 which appears to represent a record of mortgage loans made from 1946 through 1952 was prepared under your direction?

A. Yes.

Q. And represents the mortgage loans made during that (18) period of time?

A. That is right.

Q. Are the loans so made by your Association confined to any maximum and minimum value of property, property worth so many thousand dollars?

A. Generally the loans are on properties of sufficient value so that our loans don't exceed \$20,000. We seldom make a loan against a piece of property of residential use that is worth over \$40,000.

Q. What about properties for commercial users?

A. In the case of commercial loans, the properties could be worth several hundred thousand dollars.

Q. In other words, they might exceed anything that you do for residential purposes?

A. Yes.

Q. Now for what purposes are your mortgages made?

Exhibit 77—Deposition of H. O. Swanson 1141a
Direct Examination

A. For purchasing of property, for new construction, improvements, refinancing, and miscellaneous uses.

Q. Do you refinance mortgage loans when there is an outstanding loan from a bank?

A. Occasionally a loan held by a bank is paid in connection with the sale of the property to another owner who acquires his loan with us.

Q. Would you be able to tell us percentage-wise approximately how many of your loans are for new construction, and how (19) many are for home purchase, and how many for modernization during the year 1952?

A. Yes, sir, in 1952 we made \$778,885 in new construction loans, which was 21.58 percent of our total volume.

Q. How much for purchase?

A. For purchase in 1952, we made \$1,960,367 in loans; which was 54.31 percent of our total.

Q. What about for refinancing?

A. For refinancing we made \$621,407 in loans, which is approximately 17 percent of our total.

Q. Do you take FHA mortgages?

A. Yes, we do.

Q. In 1952, did you?

A. Yes, we did.

Q. Both GI and VA?

A. We didn't make a GI loan in 1952 but we made 154 FHA loans in 1952 for 35.21 percent of our total loan volume.

Q. Did you take the conventional type of mortgage then?

A. Yes.

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Q. Would you use an open end mortgage at all?

A. Yes, we do.

1142a Exhibit 77—Deposition of H. O. Swanson
Direct Examination

Q. For what purpose are they ordinarily used?

(20) A. The open end type of mortgage makes it convenient for a present mortgage borrower to obtain additional advances principally for making improvements to the property without executing a new mortgage. We simply take an additional note with an affidavit of additional advance.

Q. Do you ever advance them under that form of a mortgage an amount in excess of what the original mortgage was?

A. That occasionally happens especially in cases where a contractor or other individual has a small loan for construction purposes and later discovers that he should have borrowed a little more money and if the security is there, our mortgage permits us to advance beyond the original money.

Q. Now getting back to the conventional mortgage, what are the terms ordinarily, the rate of interest, the term, the repayment?

A. The terms of the conventional mortgage are typically ten, fifteen or twenty year loans with a five percent interest rate in 1952.

Q. Is there a minimum term under which you will loan or is it merely that your practice is such that you start most of them around ten years?

A. We are not permitted to take a mortgage loan for less than five years, although the borrower has the privilege of prepaying any loan prior to that time, prior to maturity without penalty.

(21) Q. What percentages of your mortgages do you think would be in excess of ten years?

A. The larger portion of the loans average about fifteen years.

Q. Are your mortgages all repayable monthly?

A. Yes, sir.

Exhibit 77—Deposition of H. O. Swanson 1143a
Direct Examination

Q. What other charges are made in connection with a mortgage?

A. We charge an appraisal fee, the cost of bringing the title papers to date, the attorney's examination of title and recording fees, all of which would amount to about \$30 to \$35.

Q. I am, of course, referring to 1952. Would that have been substantially true in 1952?

A. It may actually have been a little less at that time.

Q. Now if the borrowers come to you to apply for a loan and have filled out the necessary forms, application for loan and membership, and the loan has been approved, what else does the borrower have to do other than repay the loan?

A. Nothing. The mortgage requires that he pays the fire insurance and taxes.

Q. Is he required to invest any amount in your Association?

A. No.

Q. Do you have any safety deposit boxes?

A. No.

(22) Q. Do you provide facilities for money orders or travellers checks?

A. We have the facilities but they are used in a very limited way.

Q. Do you permit savings by mail?

A. We do.

Q. Do you have Christmas and Vacation Clubs?

A. No, sir.

Q. Checking accounts?

A. No, sir.

Q. Consumer credit loans?

A. No, sir.

1144a Exhibit 77—Deposition of H. O. Swanson
Direct Examination

Q. Do you advertise?

A. Yes, sir.

Q. Do you advertise a great deal or often?

A. In 1952 our advertising was confined pretty much to television and radio with some newspaper advertising.

Q. Did you advertise on radio and television every day?

A. No, sir.

Q. Every week?

A. The procedure that we followed with the broadcasting company requires that you purchase a thirteen-week program in order to get the best rate. Therefore, we had a thirteen-week series of ads in the spring of the year. Then on radio in the fall of the year, we were ahead of the ball game.

(23) Q. So at some periods, you do it every day, and at other periods less often?

A. And other periods nothing.

Q. What newspapers did you use?

A. The local papers, the Grand Rapids Herald and the Grand Rapids Press.

Q. Do you have any examples of your advertising in the local paper?

A. The newspaper advertising in 1952 was confined pretty much to very small ads which state that loans were made for the purpose of construction, purchase and remodelling and repairs of residences. A few larger ads described houses that were for sale by contractors obtaining their financing with us and the terms of financing were quoted.

.

Q. . . . I again show you advertisements marked Exhibits 11A & 11B and those are representative of the type of advertising of one nature that you did, is that correct?

Exhibit 77—Deposition of H. O. Swanson 1145a
Direct Examination

A. That is right. We also published our December 31, 1952 statement in the Grand Rapids Press on January 24, 1953.

Q. Do you only publish that once or do you publish it for a week or for how long a period?

(24) A. It is usually published in both the Grand Rapids Press and the Grand Rapids Herald at least once a year.

Q. At least once a year?

A. Yes.

Q. Do you know whether you published it more often than once in 1952?

A. Not in 1952.

Q. All right. Now in 1952, you did publish one then covering the operating statement for the preceding year?

A. Yes.

Q. So that it appeared in 1952?

A. Yes.

(Plaintiff's Exhibit 12 was marked by the reporter at this time.)

Q. Now in 1952 what taxes did you pay the State of Michigan?

A. We paid real estate taxes on our Association's office building, amounting to \$2,300.17; and we paid the Michigan Department of Revenue the intangibles tax, \$5,063.23 for the year 1952.

Q. You said that you paid real estate taxes to the State of Michigan. You paid those to the City or the County, did you not?

A. The City of Grand Rapids, yes.

Q. So that the tax you paid the State of Michigan consisted of the Michigan Intangibles Tax, is that right?

(25) A. That is right.

Q. On what did you pay your intangibles tax?

1146a Exhibit 77—Deposition of H. O. Swanson
Cross Examination

A. Our intangibles tax was paid on our total savings accounts as of December 31, of that year.

Q. At what rate?

A. 1/25th of one percent, which is 40 cents per thousand.

Q. Do you have a bill covering the taxes such as the Michigan Intangibles Tax?

A. Yes.

(Plaintiff's Exhibit 13 was marked by the reporter at this time.)

Q. I show you Exhibit 13; is there any evidence that it has been paid? This appears to be a copy of a form you sent in, is that correct?

A. It is a copy of the form but the tax was actually paid with the return.

Q. So far as you know, you paid no other tax during that period to the State of Michigan?

A. No, sir.

Mr. Butzel: I think that is all at this time.

Cross Examination

By Mr. Dexter:

Q. I would like to make it clear, Mr. Swanson, that any questions that I have to ask you would pertain primarily to the year 1952 unless the content of the answer or the nature of the (26) question would necessarily require another period. Now as I understand you, I believe you, I believe you said that your Association was organized initially as a State Association?

A. That is right.

Q. And subsequently you obtained a Federal Charter, is that correct?

A. That is right.

Exhibit 77—Deposition of H. O. Swanson 1147a
Cross Examination

Q. Could you explain why you made that change, or why the Association made that change?

A. The change was made in keeping with the general trend throughout the country to avail ourselves of the benefits of the Federal Charter and the insurance of accounts in the interest of uniformity. The Federal Charters are the same for all States in the Union, whereas State Charters differ in different States.

Q. At the time you were organized initially under a State Charter, was there any opposition to your knowledge on the part of the banks in the Grand Rapids area?

A. Of course, that was all prior to my birth but I have no knowledge of there ever having been any.

Q. At the time you obtained your Federal Charter, to your knowledge, was there any objection on the part of banks in the Grand Rapids area to the granting of your Charter?

A. Actually I was not an employee of the Mutual Home at the date this Association obtained its charter, but I was an (27) employee of a local bank and I have not heard at that time or since of any objection.

Q. In reference to the capital structure of your Association, you stated various facts as to the nature of the shares. Can these shares be assigned?

A. Yes, sir.

Q. May they be assigned without the consent of the Association?

A. To become effective, the transfer must be recorded on our books.

Q. In other words, the Association must approve the assignment and pass upon it?

A. Yes, sir.

Q. May these shares be redeemed or repurchased at the option of the Association?

1148a *Exhibit 77—Deposition of H. O. Swanson*
Cross Examination

A. They may be, yes.

Q. You have the right to take them back?

A. According to the terms of the Charter, yes.

Q. Do you reserve the power to refuse anyone's wish to become a shareholder?

A. Yes, we can.

Q. Have the stockholders and directors expressly authorized by resolution all types of business activity in which your Association is engaged?

A. Yes, sir.

(28) Q. Again, this is in reference to the 1952 period stated previously?

A. That is right.

Q. Would you describe generally the nature of each category of assets and liabilities that you have? Undoubtedly that would be indicated in your financial statement but—

A. The assets of the Association consist of first mortgage loans, loans on savings accounts, home improvement loans, properties sold on land contract, stock in the Federal Home Loan Bank, cash, and United States Government Bonds, our office building and furniture and fixtures.

The liabilities consist of savings accounts, loans in process that we are obligated to complete, reserves, surplus and accounts payable and miscellaneous items that we group as "other liabilities".

Q. Now what cash reserves are you required to keep by law?

A. Six percent of our savings accounts is the legal requirement, but we always keep cash reserves in excess of that amount.

Q. Is there any additional deposit other than those reserves that you are required to keep?

Exhibit 77—Deposition of H. O. Swanson 1149a
Cross Examination

A. No.

Q. What is the course of capital and borrowed money that your Association has?

A. Investments of members in the form of savings (29) accounts and savings certificates.

Q. That is your total source of capital—

A. That is right.

Q. In reference to your deposits and your membership certificates, do you guarantee interest to your depositors?

A. We don't guarantee the rate of return and we don't pay interest. We pay dividends.

Q. You pay dividends and not interest?

A. That is right.

Q. In other words, there is no guarantee of an interest rate?

A. That is right.

Q. Do your depositors or shareholders have the legal right to withdraw their deposits on demand?

A. As a matter of practice withdrawals are paid on demand it is only in a period of economic distress or national calamity that notice might be required.

Q. How would you answer the question as to your depositors or shareholders, do they have the legal right to withdraw their deposits on demand?

A. No.

Q. Are your depositors considered as creditors by your Association?

A. No.

Q. Where do you keep the cash you are required to (30) keep or have on hand for your business needs?

A. In our local commercial account at the Old Kent Bank and in the Federal Home Loan Bank of Indianapolis.

1150a *Exhibit 77—Deposition of H. O. Swanson*
Cross Examination

Q. Now do you keep those accounts in the regular commercial bank account?

A. Locally we do, yes.

Q. And what about the other one?

A. In the Federal Home Loan Bank of Indianapolis, our excess cash may be in either a commercial demand account or in a time deposit account on which we receive interest.

Q. Do you maintain any other kinds of deposits other than those you have described in commercial banks?

A. No, sir.

Q. Do you do any other sort of business with commercial banks?

A. No.

Q. You have no other contact with commercial banks at all?

A. No. We have the privilege of borrowing money from them but the privilege isn't used.

Q. Do you pay your dividends that are paid to your shareholders by check?

A. We do on the certificate accounts.

Q. Are those checks drawn on your commercial accounts?

A. In our case they are drawn on the commercial (31) account at the Old Kent Bank.

Q. What percentage of persons who borrow from your Association are shareholders, or deposit shareholders, I should say?

A. I would say that about ten percent to fifteen percent of our borrowing members are shareholders or savings account holders.

Q. Would you describe the procedure your organization uses upon receiving loan applications other than that you have already testified to?

Exhibit 77—Deposition of H. O. Swanson 1151a
Cross Examination

A. I think the procedure has been fully described.

Q. Do you loan any money to finance companies?

A. No, sir.

Q. What percentage of your loans are secured by mortgages on farm and residential properties?

A. We do not make any farm loans so that practically all of our loans are on residential properties with an occasional exception for a commercial or industrial property.

Q. Do you loan money secured by chattel mortgages on automobiles?

A. No, sir.

Q. Do you secure your loans by accepting shares of stock as collateral?

A. In a few instances. You are talking about such as General Motors Stock?

(32) Q. Yes.

A. The answer is No to that.

Q. Or bills of lading?

A. No.

Q. Fungible goods?

A. No.

Q. Assignment of accounts receivable?

A. No.

Q. Do you make any unsecured loans on the strength of a borrower's financial statement?

A. No.

Q. How large a percentage of the current market value of the security will you loan?

A. When you are talking about security, do you mean real estate loans?

Q. Yes.

1152a Exhibit 77—Deposition of H. O. Swanson
Cross Examination

A. Loans against real estate security, residential and up to four-family properties, are made for amounts up to two-thirds of the value, except in the case of G. I. loans or FHA loans which can be for larger amounts but carry the insurance and guarantee of a government agency.

Q. In reference to the 1952 advertising that you testified in reference to, was that advertising directed toward securing loans or securing investments?

A. Both.

(33) Q. Both?

A. Yes.

Q. You stated that you didn't go over \$20,000 in amount on loans for residential properties. Would you know what the average amount of the loans are that you make?

A. We have got that right on there for all of these years. Exhibit 10 gives the average size of the loan made from 1946 to 1952. The 1952 average size loan was \$5,675.

Q. What is the average interest rate of the loans which you make?

A. The convention loans would be five percent, but in 1952, the FHA loans were 4.25 percent, and the VA loans were four percent.

Q. What is the average duration of the loans which you make?

A. I would say about fifteen years.

Q. Would you know what percentage of your loans were for a period greater than ten years?

A. More than half of the loans would be for over ten years.

Q. What percentage would be for any period less than ten years?

A. Very little.

Exhibit 77—Deposition of H. O. Swanson 1153a
Cross Examination

Q. Would you have an idea of the percentage?

A. The percentage couldn't be more than two percent as (34) the loan for less than ten years is typically made to an elderly customer who needs some additional financing. We don't solicit those loans.

Q. What do you mean when you refer to or what do you mean by "ten year loans"?

A. The so-called ten year loan requires that the purchaser or the borrower pay one percent per month, but at five percent interest, the loan is actually ten years and ten months.

Q. Then as to an actual ten year period according to your testimony, there would be only two percent of the loans for a ten year period or less?

A. That is right.

Q. How are the loans that you make amortized?

A. On a monthly payment plan.

Q. Do you make any straight mortgage loans?

A. No, we do not.

Q. Are all the loans that you do make open-end type of mortgage loans?

A. They have been since March 15, 1952.

Q. What provisions are made in your mortgages concerning pre-payment?

A. We permit pre-payment without penalty.

Q. Do you consider them more or less liberal than pre-payment clauses used in bank mortgages?

(35) A. Actually, I am not familiar with the pre-payment privileges of bank mortgages generally.

Q. Do you sell or assign any of your mortgages?

A. We do not.

Q. Do you charge the full rate permitted for servicing VA and FHA mortgages?

A. We do not. We never have.

1154a *Exhibit 77—Deposition of H. O. Swanson*
Cross Examination

Q. Remembering that we are talking here about the year 1952, could you state what was the situation of the mortgage money market in that year?

A. Loans were in terrific demand and my opinion is that very few lenders could supply all the money that was requested for loan purposes.

Q. And that was the experience of your Association?

A. That is right.

Q. The need for additional mortgage money that apparently was not available in the Grand Rapids area related to good first-class mortgage security, did it not?

A. Yes.

Q. Is your Association subject to governmental supervision?

A. We are.

Q. Would you describe the nature and extent of that supervision and identify the governmental agency supervising you?

A. We are visited, examined, and audited by the (36) Federal Home Loan Bank of Indianapolis, as we are a member of the Sixth Federal Home Loan Bank District which comprises Michigan and Indiana.

Q. Are you a member of the Federal Reserve System?

A. No.

Q. The Federal Deposit Insurance Corporation?

A. No.

Q. Are you permitted to borrow from the Federal Reserve System?

A. No.

Q. What agency of the government if any insures your stockholders?

Exhibit 77—Deposition of H. O. Swanson 1155a
Cross Examination

A. Our shareholders are insured by the Federal Savings and Loan Insurance Corporation, an instrumentality of the United States government.

Q. What provision and procedure is made in your by-laws for paying off investors in the event of emergency or insolvency?

A. In case of insolvency and if the Federal Savings and Loan Insurance Corporation is requested to make the payments for the shareholder, they shall either be paid in cash or by transferring the account to an open insured Association.

Q. Do you have any documentary references to that procedure other than what is contained in Exhibit 1?

A. We have our rules and regulations in the Federal (37) Savings and Loan Manual that describes this procedure.

Q. Would you be able to procure copies of that for us?

A. Yes.

Q. Would you explain the operation of the insurance provided for your shareholders or depositors?

A. The safety of our accounts is insured by the Federal Savings and Loan Insurance Corporation up to \$10,000 per member. In the event of requests for withdrawals in excess of the Association's immediate ability to pay, the investors would be requested to file notice and receive their money in amounts of \$1,000 at a time per account as specially provided for in Section 12 of the Charter. This would continue indefinitely if the Association didn't restore its ability to meet withdrawals on demand.

In the event that the Association was never able to restore its ability to pay all the accounts and was declared insolvent, the Federal Savings and Loan Insurance Corporation would be called upon to pay the other

1156a Exhibit 77—Deposition of H. O. Swanson
Cross Examination

accounts by cash or by transfer to an open insured Association.

Q. At all time did you operate in accordance with the requirements of the Home Loan Bank Board?

A. Yes.

Q. And in accordance with the requirements of the Home Loan Act of 1933?

A. Yes, including the provisions of Section 5 of the Home Loan Act, 1933.

(38) Q. And in accordance with your charter and bylaws?

A. Yes, that is right.

Q. You stated generally the nature of your loan activities. Would you state that it was primarily loans to home owners, people acquiring their own homes?

A. Yes, indeed.

Q. Would you state that that was the primary purpose of the Home Loan Bank System of which you are a member?

A. Yes, it was organized to promote home ownership and to act as a reserve credit institution to provide funds for the protection of investors as well as provide additional funds for loan purposes.

Q. Would you know what percentage of your residential loans were for people to acquire their own homes?

A. The largest portion of the loans are made for purchasing and construction.

Q. Of homes?

A. That is right.

Q. Is that for occupancy by the owners?

A. Practically one hundred percent for owner-occupancy.

Q. To your knowledge was your loan policy for home mortgage purposes more liable than the banks in the area?

Exhibit 77—Deposition of H. O. Swanson 1157a
Cross Examination

A. Generally our loans are for larger amounts than banks can make because at that time we were permitted in 1952 to make larger loans than the banks could make.

(39) Q. By "larger", do you mean that you were able to make a larger loan as compared to the value of the property?

A. On the conventional type loan. The VA and FHA loan percentagewise would be the same.

Q. But on a conventional type loan, you would loan up to a higher percentage of the market value than the banks would?

A. We were permitted to do that and many loans would be made that way.

Q. Did you loan to people who had been turned down by banks because they did not wish to loan these people the amount of money they needed?

A. We probably wouldn't have been informed of that situation and I don't have any general knowledge of that, no.

Q. How many employees do you have?

A. In 1952 or now?

Q. In 1952.

A. Thirteen employees in 1952.

Q. Did you pay workmen's compensation tax to the State of Michigan?

A. Yes.

Q. Is your federal tax computed in the same manner as that of banks?

A. I don't know what the banks' rates are. I know what ours are.

Q. Are you aware of the provisions of the federal law (40) creating Federal savings and loan associations with respect to their taxation by states?

1158a Exhibit 77—Deposition of H. O. Swanson
Re-direct Examination

A. Yes.

Q. What was the market value of your shares in 1952?

A. Par.

Q. Let me ask this question; would you repeat again the total taxes paid to the state and the city of Grand Rapids in 1952?

A. We paid \$2300.17 in real estate taxes to the City of Grand Rapids, and we paid \$5063.23 to the Michigan Department of Revenue for the intangibles tax.

Q. You state that you paid workmen's compensation; do you know what amount that was?

A. \$431.10.

Q. Did you pay any federal income tax in 1952?

A. No.

Q. Do you do any of the following: Issue letters of credit?

A. No.

Q. Issue travelers checks?

A. No.

(41) Q. Have you paid any income tax since 1952?

A. No.

Mr. Dexter: That is all.

Re-direct Examination

Mr. Butzel: In 1952, was there ever a requirement by your organization to slow up anybody in liquidating their investment?

The Witness: No.

Mr. Butzel: Do you record each of the mortgages?

The Witness: Yes.

(42) Mr. Butzel: And you did in 1952?

The Witness: Yes.

EXHIBIT 77-E

64th ANNUAL FINANCIAL STATEMENT OF THE
MUTUAL HOME FEDERAL SAVINGS AND
LOAN ASSOCIATION

December 31, 1952

Assets

First Mortgage Loans	\$11,475,270.66
Loans on Savings Accounts.....	47,859.65
FHA Home Improvement Loans.....	9,075.95
Properties sold on Contract.....	71,502.95
Cash on Hand and in Banks.....	557,090.41
U. S. Government Bonds.....	1,560,093.75
Stock in Federal H. L. Bank:	250,000.00

Membership in this Federal System provides a long time working capital at a nominal interest rate, when desired.

Office Building	130,166.66
Furniture and Fixtures.....	20,807.74
Deferred Charges	6,911.82
	<u>\$14,128,779.59</u>

Liabilities

Savings Accounts	\$12,658,070.55
Loans in Process.....	118,251.34
Other Liabilities	49,975.75
Specific Reserves	5,100.97

General Reserves

Contingencies	\$150,000.00:	
Federal Insurance	412,192.59	
	<u>\$562,192.59</u>	
Surplus	735,188.39	1,297,380.98
		<u>\$14,128,779.59</u>

EXHIBIT 77-J

MUTUAL HOME FEDERAL SAVINGS & LOAN ASSOCIATION

88 Market Avenue, N. W.
Grand Rapids 2, Mich.

MORTGAGE LOANS MADE

	To Purchase	To Refinance	New Con- struction	Improve- ments	Other	Total No.	Total Amount	Average Size of Loan Made
1952	\$1,960,367.58	\$621,407.37	\$778,885.51	\$ 33,983.32	\$214,775.78	636	\$3,609,419.56	\$5,675.19

Exhibit 77-J

1160a

EXHIBIT 77-M

64th ANNUAL STATEMENT OF CONDITION

Mutual Home Federal Savings and Loan Association

December 31, 1952

Assets

First Mortgage Loans	\$11,475,270.66
Loans on Savings Accounts.....	47,859.65
FHA Home Improvement Loans.....	9,075.95
Properties Sold on Contract.....	71,502.95
Cash on Hand and in Banks.....	577,090.41
U. S. Government Bonds.....	1,560,093.75
Stock in Federal H. L. Bank.....	250,000.00
Membership in this Federal System provides a long-time working capital at a nominal interest rate, when desired.	
Office Building	130,166.66
Furniture and Fixtures	20,807.74
Deferred Charges	6,911.82
	<hr/>
	\$14,128,779.59

Liabilities

Savings Accounts	\$12,658,070.55
Loans in Process	118,251.34
Other Liabilities	49,975.75
Specific Reserves	5,100.97

General Reserves

Contingencies	\$150,000.00	
Federal Insurance	412,192.59	
	<hr/>	
	\$562,192.59	
Surplus	735,188.39	1,297,380.98
	<hr/>	<hr/>
		\$14,128,779.59

1162a

Exhibit 77-N

EXHIBIT 77-N

MICHIGAN DEPARTMENT OF REVENUE

Intangibles Tax Return

BUILDING AND LOAN

and

SAVINGS AND LOAN
ASSOCIATIONS

CALENDAR YEAR 1952

MUTUAL HOME FEDERAL SAVING & LOAN

88 Market N W

Grand Rapids 2 Mich

900766 9 09 04 28

Amount

Tax

A. Elects to pay under Section
3a (Rule 14A)Total paid in share liability
as of December 31..... \$12,658,070.55Less paid-in value of shares
owned by governmental
units as of December 31.....

Net liability subject to tax.....

Payment at 1/25 of 1%
(40c per \$1,000.00)..... 5,063.23

Total Amount Due..... 5,063.23

1952 Annual Report of Mutual Home Savings and Loan
Association to the Home Loan Bank Board

Home Loan Bank Board

and
Cooperating State Department

ANNUAL REPORT

OF

MUTUAL HOME SAVINGS AND LOAN ASSOCIATION
(Name of Institution)

88 Market Ave., N.W.

Grand Rapids, Michigan

(Street address)

(City)

(State)

AT THE CLOSE OF BUSINESS

December 31

1952

CERTIFICATION

President

Mutual Home Fed. Savings

Joel W. Leslie
Mutual Home Fed. Savings

I, Joel W. Leslie, do hereby solemnly swear that, to the best of my knowledge and belief, the books and records of said association correctly reflect the true financial condition thereof, the statements, schedules and data contained herein are true and correct, the figures appearing on all notes, mortgages and other instruments in connection therewith are genuine, and there are no undisclosed assets or liabilities.

President

Secretary

Joel W. Leslie

Subscribed and sworn to before,
on this 11 day of January
1953

(SEAL OF ASSOCIATION)

J. William Whitson

Notary Public

(NOTARIAL SEAL)

1952 Annual Report of Mutual Home Savings and Loan
Association to the Home Loan Bank Board

- 8 -

FIRST MORTGAGE LOANS

Schedule 1

(If institution holds both the first and second mortgage on the same property, both should be included as a first mortgage.)

A. First Mortgages Direct Substantive Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*	2222	\$ 12,262,222.97
2. Other improved real estate	22	614,712.00
3. Unimproved real estate		
Totals	2244	\$ 12,876,934.97 (1)

B. First Mortgages Share Accounts Substantive Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*		
2. Other improved real estate		
3. Unimproved real estate		
Totals		\$ (1)

C. First Mortgages Straight Loans

	NO. LOANS	UNPAID PRINCIPAL**
1. 1-4 family*		
2. Other improved real estate		
3. Unimproved real estate		
Totals		\$ (1)

D. Loans in Process

Total amount undisbursed on loans on 1-4 family properties \$ 112,222.34

E. Loans Serviced for Others

Unpaid balances of mortgages which the institution has contracted to service for others \$

* Include joint loans and business not so covered by family.

** "Unpaid principal" means the face value of the mortgage, minus any credits thereto, including any or part value of installment mortgage loan shares.

(1) Each total "Unpaid Principal" must agree with corresponding item (in, 1b, or 1c of Exhibit A), less any interest or advances included therein, and less mortgage loan shares (item 21, Exhibit A) pledged on share account sinking fund loans (item 1-b, Exhibit A).

ANALYSIS OF FIRST MORTGAGE LOANS MADE DURING THE PAST YEAR

Schedule 2

(If institution made both a first and second mortgage on the same property, both should be included as a first mortgage loan.)

	CONSTRUCTION	PURCHASE OF SHARES	REFINANCING*	OTHER PURPOSES	TOTALS
Number	100	273	211	20	604
Amount	\$ 775,885.32	\$ 1,948,347.30	\$ 621,487.37	\$ 242,739.18	\$ 3,588,459.17

* A refinancing loan is a loan to a borrower for the purpose of repaying his mortgage indebtedness to another lender.

Schedule C

MEMBERS' AND INVESTORS' ACCOUNTS

	NUMBER HOLDERS	TOTAL OF SUCH ACCOUNTS
(a) Members' and/or investors' accounts with aggregate balances of \$10,000 or less	<u>5538</u>	<u>10,568,144.23</u>
(b) Members' and/or investors' accounts with aggregate balances of over \$10,000 (total of these accounts).	<u>164</u>	<u>2,089,926.32</u>
Total (Amount should equal total of items 20, 21, and 22 of Exhibit A)	<u><u>5702</u></u>	<u><u>12,658,070.55</u></u>

59th Annual Financial Statement of the

Mutual Home Federal Savings and Loan Association

December 31, 1947

ASSETS

First Mortgage Loans.....	\$5,367,068.85
<small>These loans are secured on homes in Grand Rapids and vicinity.</small>	
Loans on Passbooks and Certificates	2,480.65
<small>These loans are secured, entirely, by assignment of our own shares.</small>	
Other Loans	1.00
<small>Granted at \$1.00 each.</small>	
Properties sold on Contract	380,973.37
Stock in Federal Home Loan Bank	200,000.00
<small>Membership in this Federal System provides a long term working capital at a nominal interest rate, when desired.</small>	
Investments and Securities	1,832,537.50
Office Building, Depreciated	112,000.00
<small>This building and site is entirely free from debt.</small>	
Furniture and Fixtures, Depreciated	1.00
Deferred Charges	6,581.95
Cash on Hand and in Banks	268,799.73
	\$8,170,444.05

LIABILITIES

Members' Share Accounts.....	\$7,202,358.13
Borrowed Money	None
Loans in Process.....	73,079.49
Other Liabilities	21,903.11
Specific Reserves	34,962.18
General	
Reserves	\$150,000.00
Federal Insurance Reserve	183,159.10
Undivided Profits	504,982.04
	838,141.14
	\$8,170,444.05

118 Consecutive Semi-annual Dividends paid since 1888

Exhibit 81—Deposition of J. H. Weatherwax 1167a

EXHIBIT 81

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(43) Mr. Butzel: I would like to make some stipulations. It is stipulated by and between counsel for the respective parties that this deposition may be taken by agreement by the respective counsel for the respective parties with the consent of the witness; that the reading and signing of the deposition, by the witness are waived; and may there be a stipulation between counsel that a general objection will be entered on behalf of each of the parties to any of the line of testimony introduced here, is that correct, Mr. Dexter?

Mr. Dexter: That is correct. Our objection is more general than yours would be. We object to the materiality and relevancy of any testimony that Mr. Weatherwax would give at all.

.

WEATHERWAX, MR. JOHN H., being first duly sworn by the notary to tell the truth, the full truth, and nothing but the truth, was examined, and testified as follows:

Direct Examination

By Mr. Butzel:

Q. Will you state your full name, Mr. Weatherwax?

A. John H. Weatherwax.

Q. Where do you live?

A. Grand Rapids, Michigan.

Q. Your deposition is being taken pursuant to a subpoena served upon you, is that correct?

(44) A. That is right.

1168a Exhibit 81—Deposition of J. H. Weatherwax
Direct Examination

Q. What is your position with the West Side Federal Savings and Loan Association?

A. Secretary and manager.

Q. Who is president?

A. Peter C. Peterson.

Q. How long have you been in your present office?

A. The present office, I think fifteen years.

Q. Were you employed prior to that time?

A. Yes, sir.

Q. How long have you been continuously employed?

A. Twenty-five years.

Q. Where is the Association located?

A. 410 Bridge Street Northwest, Grand Rapids, Michigan.

Q. Is that where we are today?

A. Yes, sir.

Q. How long have you been located here?

A. Well, within this block, I think this is the 69th year right in this office, and then they were next door years ago.

Q. In other words, within this block you have been since your formation?

A. 1887, that is right.

Q. Were you organized in 1887?

A. Yes.

Q. Under a State Charter?

(45) A. Yes.

Q. And are you under a State Charter now?

A. We are under a Federal Charter.

Q. A Federal Home Loan Act charter?

A. Yes.

Q. When did you receive that Federal Charter?

A. 1938.

Q. At which time you gave up the State Charter, is that correct?

Exhibit 81—Deposition of J. H. Weatherwax 1169a
Direct Examination

A. Yes, sir.

Q. Do you have any branches?

A. No, sir.

Q. This is it?

A. Yes, sir.

Q. In what general area does your Association carry on business?

A. Metropolitan Grand Rapids.

Q. Is it outside Grand Rapids—do you limit it at all?

A. Well, metropolitan Grand Rapids, I mean, that is just in the area of the City, maybe a couple of miles outside the city, but what we call metropolitan Grand Rapids.

Q. So that most of your shareholders are located within this area also, is that right?

A. I would say the majority of them are.

(46) Q. I hand you Exhibit 2, and ask you to identify that please.

A. This is the savings book for savings members.

Q. Savings accounts?

A. Savings account holders, that is correct.

Q. I show you Exhibit 3 and ask you what that is?

A. That is the borrowers book for loans.

Q. Mortgage borrowers?

A. Yes.

Q. All right, I show you now Exhibit 1. Is that a copy of your Charter and By-Laws?

A. Yes, sir.

Q. In Exhibit 3, there are rules and regulations prescribing the conditions under which your Association operates, is that correct?

A. Yes.

Q. Were they the same as in 1952?

A. Yes, sir.

1170a *Exhibit 81—Deposition of J. H. Weatherwax*
Direct Examination

(47) Q. How does your Association obtain its capital?

A. Through the savings of the members.

Q. An accumulation of—

A. Accumulation of savings.

Q. And how are your shareholders or members rights represented?

A. By certificates of membership.

Q. By a certificate of membership?

A. Yes.

Q. Is that certificate included in Exhibit 2, the membership certificate?

A. Yes.

Q. Do you ever give out any other types of certificates representing an interest in the Association?

A. Yes, the savings certificates that we issue.

Q. How do they differ from this?

A. They are written in \$100 units and the dividends are payable by check.

Q. In other words, the same as this except it is separate?

A. Yes.

Q. —is that correct?

A. Yes.

Q. How many types of shareholders do you have in your Association?

A. Two.

(48) Q. What are they?

A. Savings members and borrowing members.

Q. How much must be invested to open an account and obtain a membership?

A. One dollar or more.

Q. That is, it must be one dollar?

A. Yes.

Exhibit 81—Deposition of J. H. Weatherwax 1171a
Direct Examination

Q. And anything more? Is there a limit on it?

A. No limit.

Q. There is no ceiling?

A. No.

Q. Does it require multiples?

A. No, sir.

Q. Nothing of that sort?

A. No.

Q. Are these investments accepted at any particular time or at any time?

A. At any time.

.

Q. I again ask you to look at Exhibit 2 and identify it again for me, please.

A. This is the book of the savings accounts or savings (49) shares of members.

Q. I show you Exhibit 4; that is your financial statement of December 31, 1951?

A. Yes, sir.

Q. And it correctly represents the assets of your Association at that date?

A. Yes.

Q. And is that equally true on Exhibit 5 for the year ending December 31, 1952?

A. Yes, sir.

Q. And also correctly represents the condition of your institution as at that date?

A. Yes.

Q. Were both of these published?

A. Yes.

Q. Were they sent to your members?

A. Yes.

Q. In each of these exhibits under Liabilities there is an item entitled Savings Accounts. Do these consist of investments of your shareholders?

A. Yes, sir.

1172a Exhibit 81—Deposition of J. H. Weatherwax
Direct Examination

Q. And that is what it describes here?

A. Yes.

Q. In respect to each member, it would be likewise exhibited and reflected in their own savings book, is that correct?

(50) A. Yes, sir.

Q. Then on the Assets side, there are items, first mortgage loans, loans on savings property, property account, property sold on contract. These figures represent the indebtedness due from the various borrowing members?

A. Yes.

Q. And that, of course, would be reflected in the borrowers' books, is that right?

A. Yes.

Q. I show you Exhibit 3 and ask you to state what that is.

A. Exhibit 3 would be the mortgage loans, first mortgage loans.

Q. Mr. Weatherwax, can you give me the number of savings members that you have as of December 31, 1951, and as of December 31, 1952?

A. December 31, 1951, 1723 members.

Q. And December 31, 1952?

A. 1776 members on December 31, 1952.

Q. Could you tell me the difference between your shares and those of a commercial corporation of banking corporation?

A. Well, I would say that our shares are akin to a bank deposit.

Q. Rather than a typical stock share?

A. Rather than a commercial corporation.

Q. Do you deal directly—do you get to know most of (51) your members here?

A. Yes.

Exhibit 81—Deposition of J. H. Weatherwax 1173a
Direct Examination

Q. Would you be able to tell me whether these members come from any particular economic class in Grand Rapids and Greater Grand Rapids; do they come from high income?

A. I would say they come from all classes.

Q. You have come to that conclusion from your knowledge and contact and discussion with them, is that correct?

A. Yes.

Q. Are there any conditions normally imposed by your Association on the withdrawal of funds invested by savings members?

A. No, sir.

Q. How are your dividends determined?

A. They are determined out of income by the board of directors after operating expenses and proper allotment to reserves.

Q. Well, I suppose the dominant factor is earnings?

A. That is right, income or earnings.

Q. How are the dividends paid after they are declared?

A. They are credited to the savings share book accounts; they are mailed on the certificate accounts and they are payable on June 30th and December 31st of each year.

Q. When they are mailed, I suppose they are mailed in a check?

A. In check form.

Q. Are you your own depository or do you deposit in another bank?

A. We deposit in another bank.

Q. May the dividend be taken in cash or credited?

A. Taken in cash or credited.

Q. At the option of the member?

A. At the option of the member.

1174a Exhibit 81—Deposition of J. H. Weatherwax
Direct Examination

Q. Now speaking of 1952 and of course my question unless otherwise worded applies to it always, what was the dividend rate?

A. Two and one-half percent per annum.

Q. If a savings account is withdrawn before the dividend payment period, do you pay a pro-rata part?

A. No.

Q. You do not?

A. No.

Q. Do you loan only to members?

A. Yes.

Q. It is restricted to members, is that correct?

A. That is right.

Q. What procedure do you follow when a person seeks a loan from your Association?

A. They file an application and their credit and income is investigated. The property is appraised and it then goes to the Board for approval or rejection.

Q. Do you have a copy of the application form?

(53) A. Yes, sir, this is attached to it.

(Exhibits 6-A and 6-B were marked by the reporter at this time.)

Q. Exhibits 6-A and 6-B constitute the application for a loan, is that correct?

A. Yes, sir.

Q. Based upon the information that you secure from this and other sources, you investigate the financial ability, is that correct?

A. Yes, sir.

Q. What types of collateral are taken for your loans?

A. Real estate security, homes.

Q. Is that the only form of security you take, home real estate?

Exhibit 81—Deposition of J. H. Weatherwax 1175a
Direct Examination

A. Yes, sir.

Q. Is it restricted? That is the only type your organization loans on?

A. Yes.

Q. Residential real estate?

A. That is correct.

Q. I notice on your statements for both years loans on savings accounts. Would you explain that, please, for me, Mr. Weatherwax?

A. Those are loans taken out by savings members against their accounts, otherwise known as share loans.

(54) Q. Is it restricted?

A. To the amount of the account, yes.

Q. Do they make a written application?

A. They sign a note.

(Exhibit 7 was marked by the reporter at this time.)

Q. Exhibit 7, which has just been marked, is the form of an obligation or note used by these people in making such loans, is that correct?

A. Yes, sir.

Q. At the time any such loans are made, does the applicant file an application for membership?

A. Well, they have already been a member.

Q. —on your ordinary mortgage loans when they come in?

A. There is a certificate of membership for the loans.

Q. Do you have it here, the certificate for membership for the loan?

A. Yes, here it is.

(Exhibit 8 was marked by the reporter at this time.)

Q. Will you explain Exhibit 8 to me; who uses that, and when?

1176a Exhibit 81—Deposition of J. H. Weatherwax
Direct Examination

A. The borrower uses it at the time of the closing of the loan.

Q. For a mortgage?

A. For a mortgage loan.

Q. At the time a person wants to become an investor, (55) he likewise makes an application?

A. He makes an application.

Q. Do you have a form for that?

A. Yes.

(Exhibit 9 was marked by the reporter at this time.)

Q. I show you Exhibit 9 and ask you if that is the membership application for your investor?

A. Savings share investors, yes.

Q. Do you have any savings account members or borrowing members other than individuals, in other words, corporations or partnerships?

A. Yes.

Q. And trusts, fiduciaries, and so forth?

A. Yes.

Q. Are they both savings and borrowing members?

A. Savings.

Q. Savings only?

A. Yes.

Q. Was that true in 1952?

A. Yes, sir.

Q. Could you explain to me the item appearing on Exhibits 4 and 5, your financial statements, identified as property sold on contract? What would such assets consist of?

A. Those are land contracts with titles held by the Association, property sold on contract.

(56) A. Those are land contracts?

A. Yes, that is correct.

Q. What type of properties are they?

Exhibit 81—Deposition of J. H. Weatherwax 1177a
Direct Examination

A. Residential.

Q. All are residential?

A. Yes.

Q. Do you make any loans without collateral?

A. No, sir.

Q. Have you a record of loans closed during the years 1946 through 1952?

A. Yes, sir.

Q. Would you be able to indicate to me in terms of numbers by the year and by the amounts?

A. Yes, sir.

Q. Could you give it to me for the year 1946?

A. Loans made in 1946?

Q. Mortgage loans, yes.

A. Mortgage loans eleven for construction of homes. The amount is \$41,240.95. You want the cents also?

Q. Yes.

A. 74 loans made for the purchase of homes in the amount of \$340,128.09. 45 made for the refinancing of homes in the amount of \$114,039.20; sixteen made for the reconditioning of homes, in the amount of \$19,512.28; eighteen loans for other purposes, in the amount of \$50,466.30; or a total of 164 total mortgage loans in the amount of \$565,386.82.

(57) Q. Now, you were reading those figures from a memorandum, is that correct?

A. Yes.

Q. Was that prepared by you?

A. Prepared by me, taken from the minutes of the corporation.

Q. Are there also set forth similar figures for the subsequent years through 1952?

A. Yes, sir.

Q. Could I have those, please?

A. Yes.

1178a Exhibit 81—Deposition of J. H. Weatherwax
Direct Examination

(Exhibits 10-A and 10-B were marked by the reporter at this time.)

Q. I show you Exhibits 10-A and 10-B and ask you to state on the record the total number of mortgages given each subsequent year without breaking them down into categories, and the total number of dollars.

A. The total loans made in 1946, 164 loans in the amount of \$565,386.82

Total loans made in 1947, 233 loans in the amount of \$950,526.11.

Total loans made in 1948, 202 loans in the amount of \$691,358.31.

Total loans made in 1949, 204 loans in the amount of \$658,011.39.

(58) Total loans made in 1950, 215 loans, in the amount of \$711,273.69.

Total loans made in 1951, 184 loans, in the amount of \$599,332.34.

Total loans made in 1952, 193 loans in the amount of \$669,008.54.

Q. There is sufficient information on these exhibits so that we could determine percentage-wise the various purposes for which the mortgages have been granted?

A. Yes, sir.

Q. Do you take FHA mortgages?

A. No, sir.

Q. Did you in 1952?

A. No, sir.

Q. Therefore, all your loans are the so-called conventional type?

A. That is correct.

Q. Do you use the open end mortgage at all?

A. No.

Exhibit 81—Deposition of J. H. Weatherwax 1179a
Direct Examination

Q. None at all?

A. No, sir.

Q. What is the normal rate of interest that you charge?

A. Five percent.

Q. What is the normal term of a mortgage?

A. The normal term is anywhere from ten to twenty (59) years maximum.

Q. What would be the minimum period?

A. Ten years.

Q. That is your practice?

A. That is right.

Q. There is no requirement?

A. No.

Q. —no requirement that it be ten?

A. No.

Q. It could be one?

A. That is right, but the practice is generally one percent a month. You figure it ten years and ten months.

Q. So that all repayments are done on a monthly basis?

A. Yes, sir.

Q. What other charges are made in connection with your mortgages?

A. Well, there is the appraisal fee, recording fees, title examination.

Q. In 1952 what would it be? What would it amount to?

A. I would say \$25 to \$30.

Q. Now after the borrowers come to you and apply for a loan and fill out the necessary application for a loan and for membership, and the loan has been approved, what else is the borrower required to do other than to repay?

A. Nothing except to pay the loan up.

1180a Exhibit 81—Deposition of J. H. Weatherwar
Direct Examination

(60) Q. There is no further obligation other than that?

A. No.

Q. Is he required to invest any amount in your Association?

A. No.

Q. Do you have a safety deposit box service here?

A. We did in 1952 in a minimum way for members only, but since that, we have gotten out of the safety deposit box business.

Q. Do you provide facilities for money orders or travelers checks?

A. No, sir.

Q. Do you permit savings by mail?

A. Yes.

Q. Christmas and vacation funds?

A. No, sir.

Q. Do you have checking accounts?

A. No, sir.

Q. Consumer Credit loans?

A. No, sir.

Q. Do you advertise?

A. Yes, sir.

Q. In 1952 did you advertise?

A. Yes.

Q. Did you advertise a substantial amount?

A. In 1952 we were running an inch a day.

(61) Q. In the local papers?

A. Yes.

Q. Have you any copies?

A. This is the only copy I could find, and I know it is 1952.

Q. May I see it, please?

A. Yes.

Q. You ran an inch a day?

A. That is right, at that time.

Exhibit 81—Deposition of J. H. Weatherwax 1181a
Direct Examination

Q. Are these different ads but the same—

A. Those are the same ad, but one was in the Press and I think the other was in the Herald.

Q. Different papers?

A. Yes.

Q. So one, if I have it marked as an exhibit, would represent your advertising in Grand Rapids papers in 1952?

A. Yes, sir.

(Exhibit 11 was marked by the reporter at this time.)

Q. Do you do any radio advertising—or did you in 1952?

A. No, sir.

Q. This is the only advertising? (referring to Exhibit 11).

A. Yes.

Q. Did you send out any printed pamphlets or brochures?

A. No.

Q. Did you do any television advertising?

(62) A. No.

Q. In 1952, what taxes did you pay to the State of Michigan?

A. Intangible tax.

Q. On what did you pay the intangible tax?

A. On the aggregate of our savings accounts.

Q. Do you have a copy of your tax bill for that year?

A. I do. I have the original right here.

(Exhibit 12 was marked by the reporter at this time.)

Q. I hand you this again, that is your copy of the original sent in; it isn't what you sent in?

1182a Exhibit 81—Deposition of J. H. Weatherwax
Direct Examination

A. No, it is our copy of the original sent in with the check.

Q. Will you state on the record how much you paid?

A. \$1712.13.

Q. Have you a receipt evidencing that payment?

A. We have the cancelled check.

Q. Only the cancelled check?

A. Yes.

Q. Do you know on what rate you paid this tax?

A. Forty cents per thousand.

Q. Did you pay any other taxes? I have asked before whether you paid the State of Michigan any other taxes in 1952. Now did you pay any other taxes in 1952?

A. We paid local real estate taxes.

(63) Q. You did?

A. Yes.

Q. Do you have the amount of that?

A. Yes, sir. Do you want the total? They are broken down into two parts, the summer tax and the winter tax. The summer tax which is the city and the school tax is \$130.27; and the winter tax which is the county tax is \$27.24.

Q. Any other taxes?

A. Not in 1952, no, sir.

Q. Did you pay any workmen's compensation?

A. Not in 1952.

Q. Did you pay any federal income tax?

A. We are subject to federal income tax.

Q. But you didn't pay any?

A. Not in 1952.

Mr. McShane: You paid the withholding and social security, didn't you?

The Witness: Withholding, yes.

Exhibit 81—Deposition of J. H. Weatherwax 1183a
Cross Examination

Mr. McShane: And the social security?

The Witness: They said they didn't want the federal tax; that is my understanding, is that correct?

Mr. Butzel: That is correct.

The Witness: That is federal tax. You are asking about state and local.

Q. (By Mr. Butzel): In connection with your mortgages, (64) you record those, don't you?

A. Yes.

Q. So they would be recorded in the—

A. They are recorded in the court house of Kent County.

(Discussion off the record at this time.)

Mr. Butzel: Will you put on the record that Mr. Dexter will secure for us a copy of the Michigan Intangible tax return for the year 1952?

I think that is all.

Cross Examination

By Mr. Dexter:

Q. Mr. Weatherwax, may any of the savings or investment shares be assigned?

A. Yes, they may.

Q. In order for them to be assigned, is it necessary to get the consent of your Association?

A. Yes, sir, in the final analysis it would have to be with our consent.

Q. It would have to be with your consent?

A. Yes.

Q. May these shares be redeemed or repurchased at the option of the Association?

A. Yes.

Q. Do you reserve the power to refuse anyone who wishes to become a shareholder?

1184a Exhibit 81—Deposition of J. H. Weatherwax
Cross Examination

(65) A. No, sir.

Q. Have the stockholders and directors expressly authorized by resolution all types of business activity in which your Association engages?

A. By acts of the officers and directors, yes.

Q. What cash reserves and deposits are you required to keep by law?

A. Six percent.

Q. Do you have any other sources of capital other than the investments of your members?

A. Just the reserves and surplus but—

Q. It all comes from investments of your members?

A. Yes.

Q. Do you guarantee dividends to your depositors?

A. No, sir.

Q. Do your depositors or shareholders have the legal right to withdraw their deposits on demand?

A. It is an obligation of ours to take care of them but not on demand.

Q. Do they have the legal right to withdraw their deposits in accordance with your by-laws and in accordance with their certificates of membership?

A. No, not in the main, no.

Q. Are your depositors or investors as you wish to call them so-called creditors of your Association?

A. They are shareholders.

Q. Where do you keep the cash you are required to have on hand for business needs?

A. We keep our cash with the local bank and with the Federal Home Loan Bank.

Q. Do you keep it in regular commercial accounts here locally?

A. That is right.

Q. And what is the nature of the account with the Federal Home Loan Bank?

Exhibit 81—Deposition of J. H. Weatherwax 1185a
Cross Examination

A. The type of account, you mean?

Q. Yes.

A. A time-deposit account.

Q. Do you maintain any other kind of deposits in commercial banks?

A. No, nothing other than our commercial account.

Q. What is the local bank in which you keep your commercial account?

A. The Old Kent Bank and Union Bank.

Q. Old Kent Bank and the Union Bank?

A. Those two banks, yes.

Q. You have two banks?

A. Yes.

Q. And in both of them you keep a commercial account?

A. Yes.

(67) Q. Do you require a financial statement from the borrower before loaning money to him?

A. Yes, sir.

Q. Primarily are your loans made to individuals?

A. Yes, sir.

Q. Do you loan any money to finance companies?

A. No, sir.

Q. What percentage of your loans are secured by mortgages on residential property?

A. What percentage of our loans?

Q. Yes.

A. On residential?

Q. Yes.

A. Practically all of them. We don't make any loans on commercial properties.

Q. It is all residential?

A. Yes, all residential property.

Q. Do you loan money secured by chattel mortgages on automobiles?

1186a Exhibit 81—*Deposition of J. H. Weatherwax*
Cross Examination

A. No, sir.

Q. Do you secure loans by accepting shares of stock as collateral?

A. No.

Q. Bills of lading?

A. No.

(68) Q. Fungible goods?

A. No.

Q. Assignment of accounts receivable?

A. No, sir.

Q. Do you make any unsecured loans on the strength of a borrower's financial statement?

A. No, sir.

Q. How large a percentage of the current market value of the security will you loan?

A. Our maximum is seventy-five percent. Probably the average loan would be sixty percent or two-thirds.

Q. Now these questions that I have asked you thus far, and will continue to ask you, all relate to 1952.

A. Yes.

Q. But you will loan up to seventy-five percent, is that correct?

A. We can.

Q. —of its current value?

A. We can.

Q. And you have done that substantially in 1952?

A. I wouldn't say substantially, but we have done it.

Q. Basically it would be two-thirds?

A. I would place it more at two-thirds, yes.

Q. How are the loans that you make amortized?

A. Monthly.

(69) Q. Do you make any straight mortgage loans?

A. No.

Q. You make no open end loans, you said?

Exhibit 81—Deposition of J. H. Weatherwax 1187a
Cross Examination

A. That is correct.

Q. What provisions are made in your mortgages concerning prepayment?

A. They can make pre-payments on them.

Q. Do you sell or assign any of your mortgages?

A. No, sir.

Q. Once the mortgage and mortgage note are signed, how are the funds then made available to the borrower?

A. They are paid to them by check.

Q. And that check would be drawn on your commercial account?

A. That is right.

Q. Is there any penalty involved in case of prepayment of your mortgage?

A. We use a pre-payment penalty during the first year of ninety days interest, if the total is paid in full.

Q. But after that?

A. After that, no penalty whatsoever.

Q. Now remembering that we are talking about the year 1952, to your knowledge, what was the situation of the mortgage money market during that year? In other words, was there a lot of surplus?

(70) A. In 1952, I would say that the demand was heavier than the money available.

Q. And that demand would be on very desirable property to loan on if you had the money?

A. That is right.

Q. To your knowledge, that was generally true in the Grand Rapids area?

A. Yes.

Q. Will you describe briefly the nature of the governmental supervision of your Association?

1188a Exhibit 81—Deposition of J. H. Weatherwax
Cross Examination

A. Would you restate the question; I didn't get it.

Q. Describe briefly the governmental supervision of your Association.

A. We are a member of the Federal Home Loan Bank of Indianapolis and they examine our records supposedly once a year.

Q. You are not a member of the federal reserve system?

A. No.

Q. Or the Federal Deposit Insurance Corporation?

A. No.

Q. What agencies of the government if any insure your stockholders?

A. The Federal Savings and Loan Insurance Corporation.

Q. What provisions or procedure is made in your by-laws for paying off investors in the event of emergency, that is, if there is more demand for your cash than you have available, demand by (71) depositors?

A. Well, we can use the Federal Home Loan Bank if it is for borrowing purposes. We are allowed to borrow up to fifty percent of our total savings, and then along with our liquidity which at that time was running 24 percent, that is practically 75 percent right there, that we would be liquid.

Q. But if you had a demand over and above that, what is the procedure?

A. Well, that is not believable that you would have anything of that nature.

Q. Speaking in terms of what is required, not what might happen.

A. Well, with the amount of liquidity that we carry and the amount that we are able to get from the Federal Home Loan Bank system and the repayment of monthly mortgages, it is not believable to me that

Exhibit 81—Deposition of J. H. Weatherwax 1189a
Cross Examination

there would be anything of that nature, I mean, with that amount of liquidity.

Q. I am asking you, if there were not that liquidity, what would be the processes that are necessary?

A. For the people to get their money?

Q. Yes.

A. Well, we could go on application; we could ask for the intent to withdraw, notice of withdrawal.

Q. And after that is received and you still can't, what do they have to do?

(72) A. Well, I don't get you there now.

Q. Is that procedure spelled out in your by-laws?

A. Yes, it is.

Q. —which I was referring to?

A. Yes.

Q. And that would be the procedure that you would follow in case there was a demand for cash by the depositors that you could not meet?

A. That is right.

Q. —after the required notice is given to you?

A. Yes.

Mr. McShane: By the shareholders.

The Witness: That is right.

Q. (By Mr. Dexter): How many employees did you have in 1952?

A. Four including myself.

Q. Very quickly now, do you do any of the following, issue letters of credit?

A. No, sir.

Q. Issue travelers checks?

A. No, sir.

1190a Exhibit 81—Deposition of J. H. Weatherwax

(74)

Re-direct Examination

By Mr. Butzel:

Q. In 1952, did you ever invoke the right to require your investors to wait any period before withdrawing funds?

A. No, sir.

Q. Between the period of 1946 and 1952, did you ever?

A. No, sir.

Q. Have you ever since?

A. No, sir.

Mr. Butzel: That is all.

Re-cross Examination

By Mr. Dexter:

Q. I have one more question that I would like to ask you. You stated that you were more or less generally familiar with your investors or depositors or members. Do you say that primarily your loans were made to purchase homes that would be occupied by your borrowers?

A. By the borrowers, yes.

Q. Would you say that in your understanding, that is the primary purpose of your organization?

A. Yes.

Q. Would you further state to your knowledge that was the primary purpose of establishing the Federal Home Loan Bank System?

A. Yes, sir.

Mr. Dexter: That is all,—or let me ask you this, Mr. (75) Weatherwax, would you explain the functions of your relationship with your depositors through the Federal Savings and Loan Insurance Corporation?

Exhibit 81—Deposition of J. H. Weatherwax 1191a
Re-cross Examination

A. I don't understand the question the way it is stated.

Q. As I understand it, Mr. Weatherwax, the Federal Savings and Loan Insurance Corporation insures your members, is that correct?

A. That is correct.

Q. Now would you explain the nature of that insurance in protecting your members as well as the other safeguards provided for your members as spelled out in the Federal Savings and Loan Act as contained in your articles of incorporation and your by-laws.

A. Well, the accounts are insured by the Federal Savings and Loan Insurance Corporation to the extent of \$10,000 per account, which means that the individual may have an account in the amount of \$10,000, and a husband may have an account insured for \$10,000 or the wife may have an account insured for the maximum of \$10,000, so under those circumstances a couple can be insured to the extent of \$30,000.

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(76) Q. Let me reword it. Suppose an investor comes in in the normal course of events and asks for a withdrawal of his funds. Now as I understand it from your previous testimony, you could withhold that request at that time until there was actually a formal notice served. What would be your procedure after that?

A. Well, may I read from the charter and by-laws?

Q. Yes.

A. (Reading): The Association shall have the right to repurchase the share account at any time upon application therefor and to pay to the holders thereof the repurchase value thereof. Holders of share accounts shall have the right to file with the Association their written applications to repurchase their share accounts in part or in full at any time upon the filing

1192a Exhibit 81—Deposition of J. H. Weatherwax
Re-cross Examination

of such written application to repurchase; the association shall number and file the same in order received and shall either pay the holder the repurchase value of the share account in part or in full as requested or thirty days from receipt of such application to repurchase and apply at least one-third of the receipts of the Association from holders of share accounts and borrowers to the repurchase of such share accounts in numerical order.

Q. What is the term that is used to describe that required rotation?

A. Notice of intent to repurchase.

Q. The requirement that you are going to pay out on a (77) pro-rata basis—

A. That is called "going on notice". We call that notice of intention to withdraw or going on notice.

Q. Is not the method used to repurchase shares under such circumstances referred to as a "take your turn" provision?

A. No.

Q. Have you ever referred to it as that?

A. No, sir.

Q. But that is really what is required, isn't it, in case of insolvency or in case of an excessive demand, that you will pay out to—

A. The repurchase applications are filed in numerical order and they are paid that same way.

Q. Do you pay them out in numerical order?

A. That is correct.

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65th Annual Statement of Condition

West Side Federal Savings and Loan Association

Grand Rapids, Michigan

December 31, 1952

1071 E. 81 E.
7/2/54 JFW

ASSETS

First Mortgage Loans	\$2,808,251.00
Loans on Savings Accounts	46,811.43
Properties Sold on Contract	693,190.55
Real Estate Owned and in Judgment	2,246.75
Stock in Federal Home Loan Bank of Indianapolis	70,000.00
Investments and Securities	754,031.22
Cash on Hand and in Banks	381,760.26
Office Building and Equipment less depreciation	2,199.41
Deferred Charges and Other Assets	874.48

\$4,759,365.10

LIABILITIES

Savings Accounts	\$4,280,331.46
Loans in Process	13,860.24
Other Liabilities	372.02
Unearned Profit on Real Estate Sold	676.99
Specific Reserves	1,013.56
General Reserves	\$279,244.29
Surplus	183,866.54

463,110.83

\$4,759,365.10

Exhibit 81-E

1193a

EXHIBIT 81-J

WEST SIDE FEDERAL SAVINGS & LOAN
ASSOCIATION410 Bridge Street N. W.
Grand Rapids, Michigan

LOANS MADE—1952

10	Construction	\$ 68,700.00
25	Purchase	103,500.00
72	Refinance	281,475.00
86	Other purposes	215,333.54
<hr/>		
193	Total loans	\$669,008.54

60th Annual Statement of Condition

West Side Federal Savings and Loan Association

Grand Rapids, Michigan

December 31, 1947

ASSETS

First Mortgage Loans	\$1,516,628.91
Loans on Passbooks and Certificates	4,716.27
Other Loans	1.00
Properties Sold on Contract	568,470.63
Real Estate Owned and in Judgment	None
Investments and Securities	227,560.00
Cash on Hand and in Banks	77,152.72
Office Building and Equipment, less depreciation	2,251.00
Deferred Charges and Other Assets	347.74

\$2,397,128.27

LIABILITIES

Members' Share Accounts	\$2,079,113.65
Shares Pledged on Mortgage Accounts	None
Advances from Federal Home Loan Bank	50,000.00
Borrowed Money	None
Loans in Process	32,022.33
Other Liabilities	9,002.69
Specific Reserves	816.95
General Reserves . \$143,089.17	
Undivided Profits	83,083.48
	<u>226,172.65</u>
	<u>\$2,397,128.27</u>

Exhibit 82-B

1195a

Handwritten notes:
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7/21/48
7/21/48

FINANCIAL STATEMENT OF

CAPITOL SAVINGS & LOAN COMPANY

LANSING OFFICE

December 31, 1952

ASSETS

First Mortgage Loans - Conventional	\$4,245,221.97	
B. Y.	676,249.20	
F.H.A.	<u>459,982.36</u>	\$5,381,453.53
Home Purchase Contracts		673,808.01
Share Loans		121,572.02
Interest in Process of Collection		5,715.53
Home Office - less depreciation		258,273.32
Furniture, Fixtures & Equipment - less depreciation		13,142.97
Prepaid Expenses		7,524.97
Miscellaneous Assets		2,719.72
Federal Home Loan Bank Stock		400,000.00
United States Government Securities		1,330,212.00
Other Investment Securities		3,950.00
Cash on Hand and in Banks		1,296,143.54
		<u>\$9,494,515.61</u>

LIABILITIES

Shareholders' Accounts including Dividends Credited	\$5,809,245.98
Loans in Process	51,622.10
Tax and Insurance Escrow Accounts	1,699.09
Unapplied Credits	712.19
Miscellaneous Liabilities	16,391.48
Contingent Profit on Real Estate Contracts	20,211.54
Reserve for Interest Uncollected	5,715.53
Legal Reserve and Undivided Profits	3,588,917.70
	<u>\$9,494,515.61</u>

4875
7/14/55
[Signature]

Exhibit 88
Capital Savings and Loan Association

1197a

LOANS MADE
IN LANSING AREA
DURING 1952

No.

295

Amount

\$1,270,556.10

Handwritten:
M. L.
+
- X
J. J.
W

DETROIT & NORTHERN SAVINGS & LOAN ASSOCIATIONFLINT BRANCH BALANCE SHEETDecember 31st, 1952ASSETS

Cash on Hand and in Banks		\$ 268,069.48
Loans-First Mortgages on Homes	1,408	4,485,173.49
-G. I. Mortgage Loans	373	1,829,756.95
-D. & N. Certificates	6	5,648.53
-Land Contracts	5	4,658.24
-Purchased Land Contracts	119	463,411.24
Land & Office Buildings		\$ 82,035.63
Less-Reserve for Depreciation		15,561.80
Furniture, Fixtures & Equipment		\$ 8,651.22
Less-Reserve for Depreciation		4,114.63
Other Assets		4,536.59
		<u>2,228.35</u>

TOTAL ASSETS\$7,129,956.36LIABILITIES

Installment Savings Shares	3,454	\$5,879,945.60
Fully Paid Shares	51	159,107.77
Mortgage Loan Advances in Process		170,186.31
Home Office Account		915,651.75
Specific Reserves		<u>5,064.93</u>

TOTAL LIABILITIES & RESERVES\$7,129,956.36

**

LOANS CLOSED AT THE FLINT BRANCH OFFICEDURING THE YEAR 1952

Conventional Mortgage Loans	330	\$1,563,906.29
G. I. Mortgage Loans	100	823,930.43
		<u> </u>
<u>TOTAL</u>	<u>430</u>	<u>\$2,387,836.72</u>

EXHIBIT 97.

BY-LAWS

of the

Saginaw Building and Loan Association

of Saginaw, Mich.

ARTICLE I.

OBJECT.

The object of this Association is to afford its members a safe and profitable investment for their weekly savings, which are loaned to the members only, and to facilitate the acquiring of homesteads.

ARTICLE II.

NAME AND LOCATION.

Section 1. This Association shall be known as The Saginaw Building and Loan Association of Saginaw, Mich.

Sec. 2. The principal place of business of this Association shall be in the City of Saginaw, Saginaw County, State of Michigan.

ARTICLE III.

CAPITAL STOCK.

Sec. 1. The authorized capital stock shall be five million dollars, and be divided into fifty thousand shares of the par value of one hundred dollars each.

Exhibit 97—By-Laws
Saginaw Building and Loan Association

Sec. 2: The stock may be divided and issued in series, at the discretion of the Directors as provided in section 6 of the Act under which this Association is incorporated.

Sec. 3. No member shall vote on more than 40 shares of stock, as provided in section 7 of the Act under which this Association is incorporated.

ARTICLE IV.

MEMBERS.

Sec. 1. Any person who has subscribed for one or more shares, on which the membership fee has been paid, signed the Charter and By-Laws, and obligated himself or herself to be governed by them and such other rules and regulations as may be adopted, shall be a member of the Association.

ARTICLE V.

BOARD OF DIRECTORS.

Sec. 1. The Board of Directors shall consist of twelve members, four of whom shall be elected at the annual meeting of the stockholders.

Sec. 2. The Board of Directors shall elect from their number a President, Vice President, Secretary-Treasurer and such other officers as may be deemed necessary.

ARTICLE VI.

POWERS AND DUTIES OF DIRECTORS.

Sec. 1. The Board of Directors shall exercise the general corporate powers of the Association, and at regular or special meetings thereof shall offer for sale the funds of the Association. They shall examine all securities offered for loans and approve or reject the same.

Exhibit 97—By-Laws
Saginaw Building and Loan Association.

1201a

Sec. 2. They may suspend or discharge for good cause any officer or employee of the Association, demand for inspection at any time, from any officer, all books, papers or other documents relating to the Association, and shall have the power to fill all vacancies and fix the salaries or other compensation of the members of the Board of Directors, and of all officers and employees, and shall apportion pro rata among the stockholders the expenses and losses of carrying on the business and the profits arising therefrom.

Sec. 3. In case of a vacancy in the Board, the same shall be filled by the remaining Directors until the next annual meeting, when such vacancy shall be filled by the Stockholders for the balance of the term. Should any Director fail to attend three consecutive regular meetings of the Board, his office may be declared vacant and such vacancy shall be filled as hereinbefore provided.

Sec. 4. Seven Directors shall constitute a quorum for the transaction of business.

Provided, that it shall take seven affirmative votes to loan money.

Sec. 5. They shall submit to the Stockholders at each annual meeting, a general statement of the business of the preceding year, and a report of the financial condition of the Association.

Sec. 6. The Directors present at any regular meeting, may in their discretion remit fines incurred by the non-payment of installments or interest.

Sec. 7. They may designate the depository for the money of the Association.

Exhibit 97—By-Laws
Saginaw Building and Loan Association

ARTICLE VII.

PRESIDENT AND VICE PRESIDENT.

Sec. 1. It shall be the duty of the President, or in his absence, the Vice President, to preside at all meetings of the Association and of the Board of Directors, sign all certificates of stock and all orders drawn for the payment of money ordered by the Board or needed by the Secretary under Sec. 5, of Art. 8 of these By-Laws.

Sec. 2. The President shall have custody of all bonds (except his own which shall be held by the Secretary) executed by the officers of the Association for the faithful performance of their duties.

Provided, that nothing herein contained shall in any way authorize the President, Vice President or any other officer of the Association to in any way hypothecate the securities of the Association.

ARTICLE VIII.

SECRETARY.

Sec. 1. It shall be the duty of the Secretary to attend all meetings of the stockholders and of the Board of Directors, and enter minutes of such meetings in a book of record kept for that purpose, and to receive all money paid into the Association and hand the same over to the Treasurer promptly, taking his receipt therefor, or to deposit the same to the credit of the Treasurer, in such banks as the Board of Directors may designate.

Sec. 2. He shall keep a correct account of the business of the Association, draw and sign all orders on the Treasurer, and do such work as properly appertains to his office, and such as shall be ordered by the Board.

Saginaw Building and Loan Association

Sec. 3. He shall receive from the Attorney, after being recorded, all deeds or other documents pertaining to the business of the Association, make proper entry of the same in a book kept for the purpose, and deposit them as the Board of Directors may order.

Sec. 4. He shall make to the Board of Directors on the second Tuesday of each quarter, a statement of the financial affairs of the Association and of the business of the preceding quarter and shall publish an annual statement in April of each year.

Sec. 5. He shall keep insured all interest the Association may have in any building or property liable to loss by fire; protect the interests of the Association in all tax sales or forfeitures, and for these purposes is authorized to draw on the Treasurer without previous action of the Board, and shall report the same at the next regular meeting.

Sec. 6. Upon retiring from office he shall turn over to his successor on demand, all books, money and papers in his possession belonging to the Association.

Sec. 7. He shall receive such compensation for his services as the Board of Directors may from time to time determine.

ARTICLE IX.

TREASURER.

Sec. 1. It shall be the duty of the Treasurer to receive from the Secretary all money paid to the Association, and deposit the same in the name of the Association in such banks as the Board of Directors may designate, and pay out such moneys only on the order of the Board of Directors, except as provided in Article 8, Section 5, of

*Exhibit 97—By-Laws
Saginaw Building and Loan Association*

these by-laws, signed by the Secretary and countersigned by the President, or in his absence by the Vice President or President pro tem.

Sec. 2. He shall keep a correct account of all money received and paid out by him, and on the second and fourth Tuesday of each month render them a full statement of the business of his office.

Sec. 3. At the expiration of his term of office he shall turn over to his successor on demand, all money, books, papers or other documents in his possession belonging to the Association.

ARTICLE X.

ATTORNEY.

Sec. 1. The Attorney, who shall be a member of the Association, shall examine all abstracts and records relating to the title to real estate offered as security for loans, and certify in writing to the Board of Directors all facts that may affect the interest of the Association in case such security is accepted; and the preparation and recording of all papers for loans shall be under his supervision, and he shall perform such other duties as pertain to his office, and receive such compensation as the Board shall authorize.

ARTICLE XI.

BONDS.

Sec. 1. The President, Vice President, Secretary, Treasurer and Attorney shall each furnish to the Association bonds to the amount of not less than one thousand dollars each for the faithful performance of their duties.

Exhibit 97—By-Laws
Saginaw Building and Loan Association

1205a

ARTICLE XII.

FEES AND INSTALLMENTS.

Sec. 1. Each subscriber to the capital stock of the Association shall pay a membership fee of twenty-five cents for each share of stock taken by him or her, and pay installments on same at the rate of twelve and one-half cents per share per week and pay twenty-five cents for a pass book: *Provided*, that the Board of Directors may in its discretion reduce or remit the fees for membership or passbook.

Sec. 2. Interest at the rate of 4 per cent per annum may be allowed on all advance installment dues paid and the Board may issue advance payment certificates therefor upon such terms as it may prescribe by resolution.

ARTICLE XIII.

LOANS.

Sec. 1. All loans shall bear interest at the rate of seven per cent. per annum, payable in equal weekly payments.

Sec. 2. At the regular meeting of the Board of Directors, the funds of the Association applicable for loans may be loaned to any member who shall apply therefor in writing and shall bid the highest premium for priority of right to a loan, or said funds may be loaned, in the discretion of the Board of Directors, either with or without premium as the applicant may in writing agree to pay, in which case the priority of right to a loan shall be decided by the priority of the application therefor.

Sec. 3. Borrowers shall give real estate security, unincumbered except by the prior liens held by the Asso-

*Exhibit 97—By-Laws
Saginaw Building and Loan Association*

ciation, accompanied by a transfer and pledge to the Association of the shares borrowed upon as collateral security for the repayment of the loan: *Provided*, that no loan made upon real estate security shall exceed in amount two-thirds of the valuation as appraised by the Board of Directors:

Provided, further, that the shares of said Association may be received as security for the loan of an amount not to exceed ninety (90) per cent. of the withdrawal value of such shares.

Sec. 4. At the option of the borrower, to be declared in his application for a loan, and subject to the approval of the Board of Directors, he may make a contract and mortgage to secure the same, stating and providing for the payment of a definite number of payments of dues, and interest on each one hundred dollars loaned, and if such application shall be approved by the Board of Directors, the definite number of weekly payments to be made for dues and interest shall be as follows:

No. of Weekly Payments,	Weekly Dues,	Weekly Interest,	Total,
572.	12½ Cts.	13½ Cts.	\$148.72

Provided, That if the borrower shall bid a premium for such loan, the Board of Directors shall, in its discretion, apportion and require payment thereof in such number of equal weekly payments as is stated in the application therefor:

Provided, Further, That when the Board of Directors has declared by resolution that the shares of the borrower, upon which the loan is based, have matured and are of the value of \$100 each, and the borrower has made all of his payments, thereupon all further definite pay-

Exhibit 97—By-Laws 1207a
Saginaw Building and Loan Association

ments shall cease and such share shall be cancelled and the securities given for such loan be discharged and surrendered:

Provided Further, That at the option of the borrower he may assign two shares of stock to the Association—one share in addition to the share borrowed upon—for each \$100 borrowed, and in that case his payments shall be as follows:

No. of Weekly Payments,	Weekly Dues,	Weekly Interest	Total,
335.	25 Cts.	\$3½ Cts.	\$128.97

The premium bid, if any, to be apportioned and paid as above provided.

Sec. 5. All loans shall be secured by mortgage upon real estate or upon the stock of the Association, and in addition to the above, such other security as the Board may require, within thirty days after preference has been obtained, and be submitted to the Board of Directors, and if accepted must receive the approval in writing of a majority of said Board; but in case the borrower shall neglect to offer security within thirty days, he or she shall be charged with one month's interest on the amount bid for, together with any expenses incurred.

Sec. 6. Whenever a loan is awarded for the purpose of purchasing real estate or erecting buildings thereon, the money shall remain in the treasury until the completion of the purchase or the erection of the buildings or may be advanced in installments, as the Board may order.

Sec. 7. Mortgages, or Trust deeds, shall secure the payments of weekly installments on the shares of stock

on which loans are made, the interest and premiums on said advances, the payment of all fines imposed according to the By-Laws of the Association, and all taxes, assessments, ground rents and fire insurance on the property mortgaged, together with all taxes on the mortgage.

Sec. 8. In case of the non-payment of one or more of the items enumerated in the foregoing section, for the space of four months after the same shall become due, payment thereof may be enforced according to law.

Sec. 9. All expenses incident to abstracts, examination of title, execution of papers and recording of same shall be paid by party offering the security.

Sec. 10. For every hundred dollars loaned, there shall be transferred to the Association, in addition to the mortgage, one share of its capital stock, as collateral.

ARTICLE XIV.

INSURANCE.

Sec. 1. All buildings upon real estate taken as security for loans shall be insured against loss by fire for the benefit of the Association, at the expense of the borrower, in such company or companies as shall be satisfactory to the Board of Directors. All policies of insurance shall run direct to the owner of the property, with the usual mortgage clause, making the loss, if any, payable to the Association as its interest may appear, and be deposited with the Secretary.

ARTICLE XV.

FINES AND FORFEITURES.

Sec. 1. Every member who shall neglect to pay his or her weekly installments at the time they may become due, shall pay to the Association a fine of one per cent. per month on each dollar in arrears.

Sec. 2. Every borrowing member who shall neglect to pay the interest on his loan, or any installment of premium, shall pay to the Association a fine of one per cent. per month on each dollar in arrears.

Sec. 3. If any borrowing shareholder shall be in arrears in the payment of dues, interest, or premium on his loan for more than four months the Board of Directors may declare the stock borrowed upon forfeited and cancelled and proceed to foreclose the mortgage, which shall at once become fully due and payable: *Provided*, that in case the loan is secured by pledge or transfer of the stock of the Association, at the expiration of the four months of default, the collateral stock may be forfeited and cancelled, the note or other obligation paid out of the proceeds and the surplus, if any, be paid over without interest to the party entitled thereto.

Sec. 4. If a shareholder be in arrears in the payment of dues upon unpledged shares, the Board of Directors may, if the shareholder fails to pay the amount in arrears within thirty days after notice, declare said shares forfeited, and the withdrawal value of said shares at the time of the forfeiture shall be ascertained and paid to such shareholders upon such notice as shall be required of a withdrawing shareholder.

Sec. 5. Every share of stock shall be subject to a lien for the payment of unpaid dues and such other charges

as may be lawfully incurred thereon, and such liens may be enforced as provided in Sec. 3 of this Article, as to borrowing shareholders, and as provided by Sec. 4 of this Article as to holders of unpledged shares.

ARTICLE XVI.

WITHDRAWALS.

Sec. 1. Any shareholder desiring to withdraw his unpledged shares from the Association shall have the privilege to do so by giving thirty days written notice of such intention, and shall be entitled to receive the full amount of dues paid in by him or her upon the shares to be withdrawn, and seventy-five per cent. of the profits apportioned thereto as shown by the books of the Association, less all fines and charges remaining unpaid, as provided in Sec. 6 of the Act under which the Association is incorporated. And the amount so ascertained shall be deemed the withdrawal value of such shares.

Sec. 2. When any series shall reach par value, the shares not loaned upon shall be treated upon the same basis as other stock on which notice of withdrawal has been given, and be paid in the order of its issue as provided in Sec. 6 of said Act, without interest after date of reaching par value.

ARTICLE XVII.

TRANSFERS.

Sec. 1. All transfers of stock shall be valid only when the original certificate shall have been surrendered, a new one issued therefor, and the purchaser has signed the Charter and By-Laws.

Saginaw Building and Loan Association

Sec. 2. No stock shall be transferred while the holder or owner thereof is in arrears to the Association.

Sec. 3. For each transfer of stock on the books a fee of 25 cents per share shall be paid by the party to whom the stock is transferred: *Provided*, such fee may be reduced or remitted by the Board.

Sec. 4. On satisfactory evidence to the Board of Directors that a certificate of stock owned by a member has been lost, stolen or destroyed, a duplicate may be issued in place of the original, but as a condition thereof the owner of the stock shall furnish the Association a sufficient bond of indemnity to save it harmless.

ARTICLE XVIII.

AUDITORS.

Sec. 1. At the close of each quarter the Auditing Committee shall audit the books of the Association and the accounts of the several officers, determine the value of the shares of stock, and promptly report the same to the Board of Directors.

ARTICLE XIX.

SALE OF STOCK, EARNINGS, RESERVE.

Sec. 1. The Board of Directors shall have power to dispose of stock of any series at such rate as they deem advisable, but in no case under the book value as shown by the books of the Association.

Sec. 2. The gross earnings of the Association shall be ascertained at least once in each year, from which shall be deducted a sufficient amount to meet the operating expenses of the Association, and from said earnings only shall such expenses be paid. From the balance of the

earnings there shall be set aside at least one per cent. annually as a reserve fund, until such fund reaches five per cent. of the outstanding loans, at which rate it shall thereafter be maintained and held by annual appropriations from the earnings. From said reserve fund shall be paid all losses sustained by the Association from depreciation of securities or otherwise. After providing for the expenses of the Association, and the reserve fund as aforesaid, the residue of such earnings shall be transferred and apportioned to the credit of shareholders.

ARTICLE XX.

MATURITY OF STOCK.

Sec. 1. When the books of the Association shall show that the shares in any series have reached par value, and the Board of Directors shall so declare by resolution to be entered upon its records, the holders of such shares shall be entitled to one hundred dollars for each share of stock held by them, and no profits or interest shall be allowed to such shares thereafter, and all borrowers of that series not in default, shall receive their mortgages cancelled and their securities shall be released: *Provided*, that upon the maturity of the stock of any series, the Association shall have six months grace or time in which to accumulate sufficient funds in the hands of the Treasurer with which to pay off the said matured stock of said series, and the Treasurer is hereby authorized to hold such funds so accumulated for such purpose and no other, and the Board of Directors shall have power to require an additional bond from the Treasurer during the time he shall hold such funds.

ARTICLE XXI.

MEETINGS.

Sec. 1. The annual meetings of the Association shall be held on the second Tuesday in May of each year.

Sec. 2. Special meetings may be convened by the Board of Directors, or by the secretary on the written application of seven members of the Association, stating the time and object of such meeting.

Sec. 3. Regular meetings of the Board of Directors shall be held on the second and fourth Tuesdays of each month. Special meetings may be called by the President or Secretary whenever the business of the Association may require, and notice thereof shall be given by mailing a notice stating the time, place and object of the meeting to each of the Directors properly addressed, at least twenty-four hours before the hour of meeting.

Sec. 4. From May to September inclusive, all regular meetings shall open at 8 p. m., and from October to April inclusive, at 7:30 p. m.

Sec. 5. All regular meetings of the Board of Directors shall be open to the stockholders and all minutes and proceedings subject to their inspection.

Sec. 6. Notice of the annual meetings and of any special meetings of the Association shall be published not less than twice in one of the daily newspapers of Saginaw.

Sec. 7. No stockholder shall be allowed to vote at such meetings who is in arrears to the Association.

Sec. 8. Ten members of the Association, including a majority of the Board of Directors, shall constitute a quorum at all annual or special meetings.

Exhibit 97—By-Laws
Saginaw Building and Loan Association

Sec. 9. It shall be the duty of every shareholder, or his or her legal representative, upon changing his or her postoffice address or residence, to immediately notify the secretary of the Association of his latest residence or postoffice address.

ARTICLE XXII.

ELECTIONS.

Sec. 1. The election of Directors shall take place at the annual meeting.

Sec. 2. Should no election take place at the annual meeting, another day may be fixed by the Board of Directors in manner as provided in Sections 2 and 6 of Article XXI of these By-Laws, and in such case the notice given shall not be less than ten days prior to such election.

Sec. 3. The books of subscription for stock and transfer shall be closed ten days before each annual meeting, or any special meeting, for the purpose of electing Directors, and remain closed until after the day fixed for such election.

Sec. 4. Each member shall have one vote, either in person or by proxy in writing, for each and every share that he or she may hold. No stockholder shall cast more than 40 votes.

ARTICLE XXIII.

AMENDMENTS.

Sec. 1. The By-Laws of this Association may be altered or amended at any annual or special meeting of the stockholders, as provided by Sec. 5 of the Act under which this Association is incorporated.

Exhibit 97—By-Laws 1215a
Saginaw Building and Loan Association

ARTICLE XXIV.

Sec. 1. All By-Laws of the Association heretofore existing are hereby repealed.

We the undersigned President and Secretary of The Saginaw Building & Loan Association of Saginaw, Mich., hereby certify that the foregoing were duly adopted at a meeting of the shareholders at the office of the Association, on the 2d day of July, 1901.

Peter Herrig, President.

H. R. Witt, Secretary.

DISCHARGE OF REAL ESTATE MORTGAGE 983 611

KNOW ALL MEN BY THESE PRESENTS, That a certain Mortgage, made by

John A. Smith and Mary A. Smith, of the County of _____, State of Michigan, to the Michigan National Bank, a National Banking Association, and recorded in the office of the Register of Deeds for the County of _____, at _____, Michigan, on Page 2 and 3 of the _____, 1911.

IN WITNESS WHEREOF, the Michigan National Bank, its duly authorized officers and directors, have hereunto set their hands and seals, this _____ day of _____, 1911.

IN WITNESS WHEREOF, the Michigan National Bank, its duly authorized officers and directors, have hereunto set their hands and seals, this _____ day of _____, 1911.

1911

ATTEST:

1911

RECORDED

INDEXED

FILED

NOTED

SEARCHED

SERIALIZED

FILED

NOTED

SEARCHED

SERIALIZED

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NOTED

SEARCHED

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NOTED

SEARCHED

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FILED

NOTED

SEARCHED

SERIALIZED

FILED

MADE THIS 22ND DAY OF SEPTEMBER 1911

ATTEST:

RECORDED

INDEXED

FILED

MADE THIS 22ND DAY OF SEPTEMBER 1911

ATTEST:

RECORDED

INDEXED

MADE THIS 22ND DAY OF SEPTEMBER 1911

ATTEST:

RECORDED

INDEXED

FILED

MADE THIS 22ND DAY OF SEPTEMBER 1911

ATTEST:

RECORDED

INDEXED

FILED

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**COMPARISON OF
TIME DEPOSITS IN MICHIGAN NATIONAL BANK
WITH
SHARES IN SAVINGS AND LOAN ASSOCIATIONS**

December 31, 1932

Little Creek

Michigan National Bank		19,056,114	
Calhoun Federal Savings & Loan	10,512,930		
Industrial Savings & Loan	<u>5,970,038</u>	<u>16,482,952</u>	35,539,082

Flint

Michigan National Bank		16,079,249	
Detroit & Northern Savings & Loan (Flint Only)	6,039,053		
First Federal Savings & Loan	<u>6,516,204</u>	<u>12,555,257</u>	28,634,506

Grand Rapids

Michigan National Bank		14,931,397	
G. R. Mutual Federal Savings & Loan	15,496,286		
Mutual Home Federal Savings & Loan	12,658,070		
West Side Federal Savings & Loan	<u>4,280,331</u>	<u>32,434,687</u>	47,366,084

Lansing

Michigan National Bank		20,517,912	
Capital Savings & Loan (Lansing Only)	5,809,245		
East Lansing Savings & Loan	3,647,226		
Lansing Savings & Loan	<u>1,456,783</u>	<u>15,278,192</u>	35,796,102

Marshall

Michigan National Bank		6,089,480	
Marshall Savings & Loan	<u>612,913</u>		6,702,393

Port Huron

Michigan National Bank		19,828,026	
Citizens Federal Savings & Loan	<u>6,776,202</u>		26,604,231

Saginaw

Michigan National Bank		21,386,988	
Saginaw Savings & Loan	6,835,396		
First Savings & Loan	<u>14,491,055</u>	<u>21,326,451</u>	42,713,439

Combined

Michigan National Bank		117,889,166	
Savings & Loan Associations	<u>105,466,671</u>		<u>223,355,837</u>

COMPARISON OF
REAL ESTATE MORTGAGE LOANS OUTSTANDING
IN MICHIGAN NATIONAL BANK WITH
SAVINGS AND LOAN ASSOCIATIONS

December 31, 1952

Little Creek

Michigan National Bank		10,459,044	
Alhoun Federal Savings & Loan	9,207,234		
Industrial Savings & Loan	<u>5,069,130</u>	<u>14,276,364</u>	24,735,408

East

Michigan National Bank		12,050,649	
East & Northern Sav. & Ln. (Flint Only)	6,314,930		
East Federal Savings & Loan	<u>5,909,800</u>	<u>12,224,730</u>	24,275,379

East and Rapids

Michigan National Bank		7,404,648	
East Mutual Federal Savings & Loan	13,180,745		
Equal Home Federal Savings & Loan	11,475,270		
East Side Federal Savings & Loan	<u>2,808,251</u>	<u>27,464,266</u>	34,868,914

Lansing

Michigan National Bank		11,103,638	
Capitol Savings & Loan (Lansing Only)	5,381,453		
East Lansing Savings & Loan	3,442,267		
Lansing Savings & Loan	928,706		
Easton Building & Loan	<u>4,820,591</u>	<u>14,573,017</u>	25,676,655

Easthall

Michigan National Bank		1,733,460	
Easthall Savings & Loan		<u>639,901</u>	2,373,361

East Huron

Michigan National Bank		9,907,391	
East Huron Federal Savings & Loan		<u>6,360,036</u>	16,267,427

East Lansing

Michigan National Bank		9,138,093	
East Lansing Savings & Loan	5,811,923		
East Lansing Savings & Loan	<u>13,622,557</u>	<u>19,434,480</u>	<u>28,572,573</u>

East Livonia

Michigan National Bank		61,796,923	
East Livonia Savings & Loan Associations		<u>94,972,794</u>	<u>156,769,717</u>

59
114/58
2

EL 99

Exhibits 101 A-1 through 101 A-11 1217a(P)

EXHIBITS 101 A-1 through 101 A-11

Exhibit 101 A-1 consists of the documents comprising a sample F.H.A. mortgage loan made by the Michigan National Bank during 1952. It includes the Mortgage Note, the Mortgage, and the Mortgagee's Application for Mortgage Insurance.

Exhibit 101 A-5 consists of the documents comprising a sample Conventional mortgage loan made by the Michigan National Bank during 1952. It includes the Mortgage Note the Real Estate Mortgage, and the Application for Real Estate Mortgage.

Exhibit 101 A-9 consists of the documents comprising a sample V.A. mortgage loan made by the Michigan National Bank during 1952. It includes the Mortgage Note, the Mortgage, and the Application for Real Estate Mortgage.

Sixty-nine (69) similar sets of documents evidencing other sample F.H.A., Conventional and V.A. mortgage loan transactions by each office of the Michigan National Bank during the year 1952 were introduced at trial. But, to avoid unnecessary duplication, they have not been printed herein.

#199 June 25

FD Form No. 9131

MORTGAGE NOTE

\$7,200.00

Flint, Michigan
February 4, 1952

FOR VALUE RECEIVED, The undersigned, jointly and severally, promise(s) to pay to the order of
MICHIGAN NATIONAL BANK, a National Banking Association

the principal sum of Seventy two hundred and no/100 - - - - -
Dollars (\$ 7,200.00), with interest from date, at the rate of four and one quarter
per centum (4 1/4 %) per annum on the unpaid balance until paid. The said principal and interest
shall be payable at the office of Michigan National Bank

at Flint, Michigan
or at such other place as the holder may designate in writing, in monthly installments of Forty four and
6/100 - - - - - Dollars (\$44.64 - -), commencing on the first day of
March, 1952, and on the first day of each month thereafter until the principal and
interest are fully paid, except that the final payment of the entire indebtedness evidenced hereby, if not
sooner paid, shall be due and payable on the first day of February, 1972.

In the event of default in payment of any installment under this note, and if such default is not made
good prior to the due date of the next such installment, the holder of this note may, without notice, at its
option declare all the remainder of said debt at once due and payable, and any failure to exercise said option
shall not constitute a waiver of the right to exercise the same at any time.

Demand, protest, presentment, and notice of nonpayment are hereby waived.

Frank E. Pycher
Frank E. Pycher
Alma P. Pycher
Alma P. Pycher

This is to certify that this is the note described in and secured by mortgage of even date and in the
same principal amount as herein stated and secured by real estate situated in the County of
State of Michigan.

Dated this Fourth day of February, 1952

Pp 101-A-1
7/1/58
JFW

[Signature]
Notary Public in and for the County of Cass
State of Michigan
My commission expires May 2, 1955

1219a

Exhibit 101 A-1^c
Sample F.H.A. Mortgage Note

This form may be used as the credit instrument in connection with mortgages to be insured under Section 2, Section 203, Section 208, and Section 209 pursuant to Section 604, of the National Housing Act, and in connection with "individual mortgages" to be insured under Section 210 and Section 611 of the National Housing Act.

STATE OF MICHIGAN

LOAN NO. 1381

Mortgage Note

Frank E. Pyscher and Alma P. Pyscher,
his wife

TO

MICHIGAN NATIONAL BANK

26-601456
203
of the National Housing Act
and Regulations of the
Federal Housing Commission
Aug. 15 1946
FEDERAL HOUSING COMMISSION
FEB 27 1952
Reference is made to the Act and to the Regulations promulgated
pursuant to the Act and to the Regulations promulgated
pursuant to the Act.

MORTGAGE
NTIC 941 PAGE 382
LIBER

THIS MORTGAGE made this Fourth day of February, 1952, between Frank E. Pyscher and Alma P. Pyscher, his wife, of the City of Flint, County of Genesee, State of Michigan, hereinafter referred to as the Mortgagor, and MICHIGAN NATIONAL BANK, a National Banking Association, a corporation organized and existing under the laws of United States of America, hereinafter referred to as the Mortgagee,

WITNESSETH: That the Mortgagor for and in consideration of the sum of Seventy two hundred and no/100 - - - Dollars (\$ 7,200.00), the receipt whereof is hereby acknowledged, and for the purpose of securing the repayment of said sum, with interest as hereinafter provided, and the performance of the covenants hereinafter contained, hereby mortgages and warrants unto the Mortgagee, its successors and assigns, the lands, premises, and property, situated in the City of Flint, County of Genesee, State of Michigan, described as follows, to wit:

Lot 13 Block 20 of Leeddale, according to the recorded plat thereof.

Exhibit 101 A-1-
Sample F.H.A. Mortgage

1220a

2
JEF's Ex 101-A-1
7/19/58
BFW

SUCCESS: That he will promptly pay the principal of and interest on the indebtedness evidenced by the said note, at the times and in the manner there provided. Privilege is reserved to pay the debt in whole, or in an amount equal to one or more monthly payments on the principal that are next due on the note, on the first day of any month prior to maturity; provided, however, that written notice of an intention to exercise such privilege is given at least thirty (30) days prior to prepayment; and, provided further, that in the event the debt is paid in full prior to maturity and at that time it is insured under the provisions of the National Housing Act he will pay to the Mortgagee an adjusted premium charge of one per centum (1%) of the original principal amount thereof, except that in no event shall the adjusted premium exceed the aggregate amount of premium charges which would have been payable if the mortgage had continued to be insured until maturity; such payment to be applied by the Mortgagee upon its obligation to the Federal Housing Commissioner on account of mortgage insurance.

TERMS: That, in order more fully to protect the security of this mortgage, the Mortgagor, together with, and in addition to, the monthly installments of principal and interest payable under the terms of the note secured hereby, will pay to the Mortgagee the following sums:

- (a) If this mortgage and the note secured hereby are insured under the provisions of the National Housing Act and so long as they continue to be so insured, one-twelfth ($\frac{1}{12}$) of the annual mortgage insurance premium for the purpose of putting the Mortgagee in funds with which to discharge its obligation to the Federal Housing Commissioner for mortgage insurance premiums pursuant to the applicable provisions of the National Housing Act, as amended, and Regulations thereunder. The Mortgagee shall, on the termination of its obligation to pay mortgage insurance premiums, credit to the account of the Mortgagor all payments made under the provisions of this subsection which the Mortgagee has not become obligated to pay to the Federal Housing Commissioner.
- (b) A sum equal to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other hazard insurance covering the mortgaged property, plus taxes and assessments next due on the mortgaged property (all as estimated by the Mortgagee) less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, taxes, and assessments will become delinquent, such sums to be held by Mortgagee in trust to pay said ground rents, premiums, taxes, and special assessments.
- (c) All payments mentioned in the two preceding subsections of this paragraph and all payments to be made under the note secured hereby shall be added together and the aggregate amount thereof shall be paid by the Mortgagor each month in a single payment to be applied by the Mortgagee to the following items in the order set forth:
 - (I) premium charges under the contract of insurance with the Federal Housing Commissioner;
 - (II) ground rents, taxes, assessments, fire and other hazard insurance premiums;
 - (III) interest on the note secured hereby; and
 - (IV) amortization of the principal of said note.

Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the Mortgagor prior to the due date of the next such payment, constitute an event of default under this mortgage. The Mortgagee may collect a "late charge" not to exceed two cents (2¢) for each dollar (\$1) of each payment more than fifteen (15) days in arrears to cover the extra expense involved in handling delinquent payments.

FOURTH: If the total of the payments made by the Mortgagor under (b) of paragraph Third preceding shall exceed the amount of payments actually made by the Mortgagee for ground rents, taxes, or assessments or insurance premiums, as the case may be, such excess shall be credited by the Mortgagee on subsequent payments to be made by the Mortgagor. If, however, the monthly payments made by the Mortgagor under (b) of paragraph Third preceding shall not be sufficient to pay ground rents, taxes, and assessments, and insurance premiums, as the case may be, when the same shall become due and payable, then the Mortgagor shall pay to the Mortgagee any amount necessary to make up the deficiency, on or before the date when payment of such ground rents, taxes, assessments, or insurance premiums shall be due. If at any time the Mortgagor shall tender to the Mortgagee, in accordance with the provisions of the note secured hereby, full payment of the entire indebtedness represented thereby, the said Mortgagee shall, in computing the amount of such indebtedness, credit to the account of the Mortgagor all payments made under the provisions of (a) of paragraph Third hereof which the Mortgagee has not become obligated to pay to the Federal Housing Commissioner, and any balance remaining in the funds accumulated under the provisions of (b) of paragraph Third hereof. If there shall be any default under any of the provisions of this mortgage resulting in foreclosure or public sale of the premises covered hereby or if the Mortgagee acquires the property otherwise after default, the Mortgagee shall apply, at the time of the commencement of such proceedings or at the time the property is otherwise acquired, the balance then remaining in the funds accumulated under (b) of paragraph Third preceding as a credit against the amount of principal then remaining unpaid under said note and shall properly adjust any payments which shall have been made under (a) of said paragraph.

Exhibit 101 A-1
Sample F.H.A. Mortgage

1221a

NINTH: That he will pay to the Mortgagee forthwith the amounts of all sums of money which the Mortgagee shall pay or expend pursuant to the provisions, or any of them, hereinbefore contained, together with interest, upon each of said amounts until paid from the time of the payment thereof at the rate set forth in the note secured hereby, and such payments shall be a further lien on the premises under this mortgage.

TENTH: That should any default be made in the payment of principal or interest, or in the performance of any other covenant of this mortgage or the note secured hereby or any part thereof, when the same is payable or the time of performance has arrived, as above provided, then all the remainder of the aforesaid sum with all sums due hereunder shall at the option of the Mortgagee without notice become immediately payable thereafter, although the period above limited for the payment thereof may not have expired, anything hereinbefore or in said note contained to the contrary notwithstanding, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time.

ELEVENTH: That no sale of the premises hereby mortgaged and no forbearance on the part of the Mortgagee and no extension of the time for the payment of the debt hereby secured given by the Mortgagee shall operate to release, discharge, modify, change or affect the original liability of the Mortgagor herein either in whole or in part.

TWELFTH: That upon default being made in the payment of the sums of money herein agreed to be paid or in the performance of any of the covenants or agreements herein contained according to the terms hereof or of the note secured hereby the Mortgagee is hereby authorized and empowered to sell or cause to be sold the property hereby mortgaged, and to convey the same to the purchaser, pursuant to the statute in such case made and provided, and out of the proceeds of such sale to retain the moneys due under the terms of this mortgage, the costs and charges of such sale and also the attorneys' fee provided by statute, rendering the surplus moneys (if any there should be) to the said Mortgagor. In the event of public sale, the mortgaged premises may, at the option of the Mortgagee, be sold in one parcel.

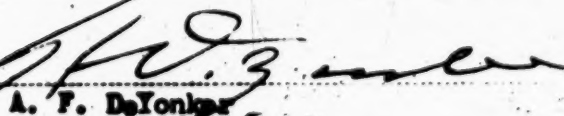
THIRTEENTH: The Mortgagor further agrees that should this mortgage and the note secured hereby not be eligible for insurance under the National Housing Act within from the date hereof (written statement of any officer of the Federal Housing Administration or authorized agent of the Federal Housing Commissioner dated subsequent to the time from the date of this mortgage, declining to insure said note and this mortgage, being deemed conclusive proof of such ineligibility), the Mortgagee or the holder of the note may, at its option, declare all sums secured hereby immediately due and payable.

FOURTEENTH: The Mortgagor covenants and agrees that so long as this mortgage and the said note secured hereby are insured under the provisions of the National Housing Act, he will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed. Upon any violation of this undertaking, the Mortgagee may, at its option, declare the unpaid balance of the debt secured hereby immediately due and payable.

The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.


IN WITNESS WHEREOF the Mortgagor(s) has set their hand(s) and seal(s) the day and year first above written.

Signed, sealed, and delivered in the presence of


A. F. DeYonker


A. C. Smith

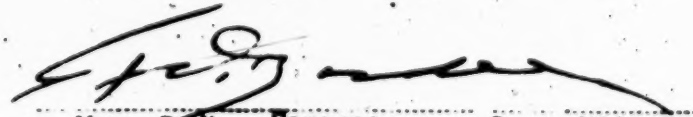

Frank E. Pyscher


Alma P. Pyscher

[L. S.]
[L. S.]
[L. S.]
[L. S.]

STATE OF MICHIGAN,
COUNTY OF Genesee

On this Fourth day of February, A. D. 19 52, before me, a Notary Public in and for said County, personally appeared Frank E. Pyscher and Alma P. Pyscher, his wife, to me known to be the persons described in and who executed the within mortgage and acknowledged the execution thereof to be their free act and deed.


Notary Public, Genesee County, Michigan.
A. F. DeYonker

Sample F.H.A. Mortgage

Exhibit 101 A-1

12228

FEDERAL HOUSING ADMINISTRATION
MORTGAGEE'S APPLICATION
FOR MORTGAGE INSURANCE
(To be submitted in Original to Insuring Office)

PD 6-101-A-1
7/14/54
No. _____
(If a conversion insert FHA number)

Sample F.H.A. Mortgagee's Application for Mortgage Insurance
Exhibit 101 A-1
1223A

FEDERAL HOUSING COMMISSIONER,
DEAR SIR:

Pursuant to provisions of Section 203; ☐ Section _____ of the National Housing Act, the undersigned hereby applies for the insurance of a mortgage loan which it regards as safe and desirable, and proposes to make, if this application is approved, to Frank E. and Alma P. Pyscher

Such mortgage loan will be in the principal amount of \$ 7,500.00

bearing interest at 12 per centum per annum and payable in 360 equal monthly installments and will be secured by a first lien upon real property described in Property Description. In support of this application the undersigned submits herewith the Mortgagors' Statement and Property Description together with such exhibits as are required by the instructions on page 4 of this application.

A credit report from Retailers Credit Bureau agency: ☐ was ordered on _____, for direct delivery to you; ☒ is attached. Completion of FHA Form 2004f ☐ was requested on _____ from depository named _____ in Mortgagors' Statement, or ☒ comparable information is attached hereto. Completion of FHA Form 2004g ☐ was requested on _____ from borrower's employer, or ☐ comparable information is attached hereto.

The undersigned hereby expressly agrees in the event the insurance herein applied for is granted by you, to pay to you an annual premium in accordance with the Regulations of the Federal Housing Commissioner, the first premium payment to be made simultaneously with the granting of such insurance, and until the mortgage is paid in full, or the mortgaged property is conveyed by the Commissioner, or until the contract of insurance is otherwise terminated, the cost and each succeeding premium shall be paid thereafter on the same date in each year as that on which the amortization period begins; and further agrees that if the mortgagors shall pay such loan in full prior to its maturity, the undersigned will pay to you the adjusted premium charge required in such event by the applicable Regulations. The undersigned further agrees that immediately upon the granting by you of the insurance hereto applied for, all of the terms and conditions subject to which such insurance may be granted, shall be and become a contract between the undersigned and you, which shall be binding upon and inure to the benefit of the and your successors.

Enclosed is a check of the undersigned for an amount which has been computed in accordance with the Administrative Rules, such payment to represent reimbursement for the costs of appraisal by the Commissioner. It is understood that should this application be rejected by you as a result of preliminary examination, such sum will be returned by you to the undersigned.

The undersigned represents that to the best of its knowledge and belief no statement made and no information contained in this application, in the Mortgagors' Statement, or in the Property Description, submitted in connection with this loan, is in any respect untrue, incorrect, or incomplete.

IN WITNESS WHEREOF, the undersigned has caused this application to be executed by its proper officers, thereunto duly authorized, this 17th

day of JANUARY, 1954
FLINT, MICHIGAN
(Address)

MICHIGAN NATIONAL BANK
(Mortgagee)
L. J. Pyscher (Name and title of officer) Vice-President

MORTGAGORS' STATEMENT

A. PURPOSE OF MORTGAGE LOAN (Complete applicable Schedule or Schedules below).

1. Financing of New Construction.—(a) Approximate date construction was or is to be started _____
 - (b) Date land purchased _____ (c) Purchase price \$ _____
 - (d) From whom purchased _____ (Name and address) _____
 - (e) Estimated cost of construction, including main building, outbuildings, walks, driveways, grading, etc., plus architect's fee, if any. Exclude cost of land and cost of closing the transaction \$ 1-11-54
2. Financing Purchase of Property.—(a) Date purchased _____ (b) Purchase price \$ 7,500.00
 - (c) From whom purchased Louis Kaurath (Name and address) _____
2. Refinancing Existing Indebtedness in Connection With Subject Property.—(a) Total amount owed \$ _____
 - (b) Are payments current? ☐ (c) If not, state amount(s) in default for principal, \$ _____ interest, \$ _____ real estate taxes, _____ special assessments, \$ _____
 - (d) When was property acquired? _____ (e) Purchase price, \$ _____
 - (f) If property is being acquired under contract for deed, attach signed or certified copy of contract
3. Financing of Proposed Improvements to Existing Construction as described in Property Description. Estimated cost to mortgagor of proposed improvements \$ _____
3. Other.—(a) Describe briefly any other intended use of mortgage proceeds _____ (b) Amount required \$ _____
6. Do you intend to occupy, rent, or sell this property? occupy Proposed sale price (if for sale) \$ _____
(State which)

Use separate statement for Items D.1 through K. for co-mortgagor other than wife.

D. EMPLOYMENT STATUS

1. Mortgagor

(a) Employer's name **AC Spark Plug Div., GM**
 (b) Employer's address **Flint, Mich.**
 (c) Type of business **automotive**
 (d) Position occupied **supervision**
 (e) Name and title of superior
 (f) Number of years in present employment **17**

*Note.—If less than 2 years, attach rider giving same details with respect to prior employment status.

2. Co-Mortgagor

(a)
 (b)
 (c)
 (d)
 (e)
 (f)

E. LIFE INSURANCE

(1) Total in force, \$ **15,000** Cash value, \$
 (2) Less amount of loans on policies
 (3) Net cash surrender value

F. FAMILY STATUS

Number of years married **15**
 Ages of dependents
 other than spouse

G. FINANCIAL STATEMENT. (Excluding equity and liability in connection with subject property.)

(A combined statement may be made for mortgagors who are husband and wife. In other cases a separate statement must be filed for each mortgagor on Form 2004. A corporate mortgagor or a mortgagor who derives his principal income from his own business must attach a current balance sheet and operating statement of the business.)

Cash accounts (list):	Assets	Statement date	Liabilities
Where deposited:			
Merchants & Mech. Bank, Flint	1,000.00		Accounts payable (except installment accounts) \$
			Installment account payable, automobile \$
			Monthly payment \$
Securities (list or attach schedule):			Other installment accounts payable \$
Series A Bonds, value	800.00		Monthly payment \$
			Notes payable \$
Value of real estate owned, other than subject property, from Schedule H	10,500.00		Repayment terms
Other important assets (list or attach schedule):			Indebtedness on real estate, other than subject property, from Schedule H 1,200.00
Furniture	2,500.00		Other liabilities \$
1970 Chevrolet	1,500.00		Repayment terms
TOTAL	15,800.00		TOTAL 1,200.00

H. REAL ESTATE OWNED OTHER THAN SUBJECT PROPERTY.

(If more than one property is owned attach separate schedule.)

Residence, Fenton Township	Estimated Value	Indebtedness	Annual Payment Principal and Interest	Annual Gross Income (a)	Annual Operating Expenses Including Taxes (b)	Annual Net Income (a) - (b)
(Type and address of property)	10,500	1,200	132.00			
(Name and address of mortgagor)						

I. ANNUAL INCOME

Base pay of mortgagor **4,800.00**
 (Based upon current rate of earnings, except earnings from commissions or fees, which should be reported on the basis of the past 12 months)
 Overtime or other employment earnings **600.00**
 Base pay of co-mortgagor
 Overtime or other employment earnings
 Net income from real estate, from Schedule H
 Income from other sources (list sources and amounts)
TOTAL INCOME **5,400.00**

J. ANNUAL FIXED CHARGES (Past 12 months).

Federal and State income tax **126.00**
 Premium on life insurance **12.00**
 Payments on installment accounts
 Mortgage or contract payments on other real estate from Schedule H **132.00**
 Payments on other loans
TOTAL FIXED CHARGES **270.00**

K. APPROXIMATE HOUSING EXPENSE (Past 12 months).

(a) Mortgage payment or rent **132.00**
 (b) Taxes **80.00**
 (c) Heat **150.00**
 (d) Water, gas, electricity **150.00**
 (e) Maintenance
TOTAL **712.00**

Flint P 100 June 27

No. 4244 Flint, Michigan March 28 19 52
FOR VALUE RECEIVED, I/We promise to pay to the order of MICHIGAN NATIONAL BANK, at its office in this city, or at such other place as the holder hereof may designate in writing,
Seventy-five hundred and no/100 ----- DOLLARS \$ 7,500.00
with interest from date at the rate of 6 per cent per annum on the unpaid balance until paid, in monthly installments of Sixty-five and no/100 ----- 65.00 or more, including interest, commencing on the 15th day of April 19 52 and continuing on the same day of each month thereafter until the principal and interest are fully paid, the entire balance, however, to be due and payable on March 28 19 62. Each installment shall be first applied to interest unpaid at the date of said payment and the remainder to the unpaid principal. This note is secured by a real estate mortgage of even date. In case any default in any of the terms of this note or of said mortgage shall constitute for thirty days thereafter at the option of the Bank, without notice, any unpaid balance hereunder shall become immediately due and payable, and any failure to exercise such option shall not constitute a waiver of the right to exercise such option at any future time, and any such balance shall draw interest at the rate of seven per cent per annum after such thirty days until all sums in default are fully paid.

ADDRESS
2921 Barth St.

Reinhardt Radke
Reinhardt Radke

Evelyn J. Radke
Evelyn J. Radke

16-19 Real Estate Mortgage Note

Exhibit 101 A-5
Sample Conventional Mortgage Note

1225a

Plt 43 101-A-5

together with the hereditaments and appurtenances thereunto belonging, including all gas and electric fixtures, radiators, radiator shields or covers, heaters, oil burners, gas burners, engines, and machinery, boilers, furnaces, ranges, elevators and motors, bath-tubs, sinks, water closets, basins, pipes, showers, faucets and other plumbing and heating fixtures, mirrors, mantels, refrigerating plants and ice boxes, screens, awnings, cooking apparatus and appurtenances, and such other goods and chattels and personal property as are ever furnished by a landlord in letting or operating an unfurnished building, similar to the one herein described and referred to, which are now or shall hereafter be attached to said building or premises by nails, screws, bolts, pipe connections, masonry, or in any other manner, which are and shall be deemed to be fixtures and an accession to the freehold and a part of the realty as between the parties hereto, their heirs, executors, administrators, successors and assigns, and all persons claiming by, through, or under them, and shall be deemed to be a portion of the security for the indebtedness herein mentioned and to be covered by this mortgage.

TO HAVE AND TO HOLD the above mortgaged premises, together with the appurtenances thereunto appertaining unto the said Mortgagee forever, provided that if the Mortgagor shall pay the principal and all interest as provided in a certain promissory note executed by said Mortgagor to said Mortgagee of even date herewith and shall pay all other sums hereinafter provided for, and shall well and truly keep and perform all of the covenants herein contained, then this mortgage and the aforesaid note shall be null and void; otherwise to remain in full effect.

And the Mortgagor hereby covenants as follows:

First: For value received and the consideration aforesaid, the Mortgagor hereby agrees to pay to the Mortgagee at its office in City of Flint, in the County of Ontonagon, State of Michigan, or at such other place as the holder of the note may designate in writing, the principal sum of Seventy two hundred and no/100 - - - - - Dollars (\$ 7,200.00), with interest from date at the rate of four and one quarter per centum (4 1/4 %), per annum on the unpaid balance until paid. The said principal and interest shall be payable in monthly installments of Forty four and 64/100 - - - - - Dollars (\$ 44.64 - -), commencing on the first day of March, 19 52, and on the first day of each month thereafter until the principal and interest are fully paid, except that the final payment of principal and interest, if not sooner paid, shall be due and payable on the first day of February, 19 52, according to the terms of a promissory note bearing even date herewith executed by the Mortgagor to the Mortgagee.

FOURTH: If the total of the payments made by the Mortgagor under (b) of paragraph Third preceding shall exceed the amount of payments actually made by the Mortgagee for ground rents, taxes, or assessments or insurance premiums, as the case may be, such excess shall be credited by the Mortgagee on subsequent payments to be made by the Mortgagor. If, however, the monthly payments made by the Mortgagor under (b) of paragraph Third preceding shall not be sufficient to pay ground rents, taxes, and assessments, and insurance premiums, as the case may be, when the same shall become due and payable, then the Mortgagor shall pay to the Mortgagee any amount necessary to make up the deficiency, on or before the date when payment of such ground rents, taxes, assessments, or insurance premiums shall be due. If at any time the Mortgagor shall tender to the Mortgagee, in accordance with the provisions of the note secured hereby, full payment of the entire indebtedness represented thereby, the said Mortgagee shall, in computing the amount of such indebtedness, credit to the account of the Mortgagor all payments made under the provisions of (a) of paragraph Third hereof which the Mortgagee has not become obligated to pay to the Federal Housing Commissioner, and any balance remaining in the funds accumulated under the provisions of (b) of paragraph Third hereof. If there shall be any default under any of the provisions of this mortgage resulting in foreclosure or public sale of the premises covered hereby or if the Mortgagee acquires the property otherwise after default, the Mortgagee shall apply, at the time of the commencement of such proceedings or at the time the property is otherwise acquired, the balance then remaining in the funds accumulated under (b) of paragraph Third preceding as a credit against the amount of principal then remaining unpaid under said note and shall properly adjust any payments which shall have been made under (a) of said paragraph.

FIFTH: That he will pay at maturity all ground rents, taxes, assessments, and all other charges and encumbrances which now are or shall hereafter be or appear to be a lien upon the said premises or any part thereof, and for which provision has not been made hereinbefore, and will make payments on account of the taxes and assessments levied or to be levied against the premises in the manner provided in (b) of paragraph Third hereof; and that in default thereof the Mortgagee may, without demand or notice, pay the said taxes, assessments, charges, or encumbrances, and pay such sum of money as the Mortgagee may deem to be necessary therefor, and shall be the sole judge of the legality or validity thereof and of the amount necessary to be paid in satisfaction thereof.

SIXTH: That he will keep the improvements now existing or hereafter erected on the mortgaged property, insured as may be required from time to time by the Mortgagee against loss by fire and other hazards, casualties and contingencies in such amounts and for such periods as may be required by the Mortgagee and will pay promptly, when due, any premiums on such insurance provision for payment of which has not been made hereinbefore. All insurance shall be carried in companies approved by the Mortgagee and the policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the Mortgagee. In event of loss Mortgagor will give immediate notice by mail to the Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee instead of to the Mortgagor and the Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In event of foreclosure of this mortgage or other transfer of title to the mortgaged property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee.

SEVENTH: That he will abstain from the commission of waste on said premises and keep the buildings thereon and all equipment therein mortgaged in good repair, and promptly comply with all laws, ordinances, regulations, and requirements of any governmental body affecting the said mortgaged premises, and should said premises or any part thereof require inspection, repair, care or attention of any kind or nature not provided by the Mortgagor, the Mortgagee, being hereby made sole judge of the necessity therefor, may, after notice to the Mortgagor, enter or cause entry to be made upon said property, and inspect, repair, protect, care for or maintain said property as the Mortgagee may deem necessary, and may pay such sum of money as the Mortgagee may deem to be necessary therefor, and shall be the sole judge of the amount necessary to be paid.

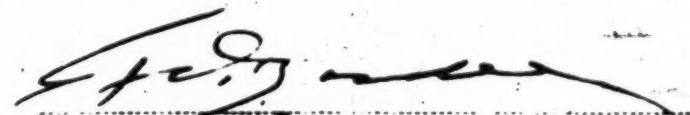
EIGHTH: That should any default be made in the covenants of this mortgage, the Mortgagee may cause the abstract or abstracts of title and the tax histories of said premises to be certified to date, or may procure new abstracts of title and tax histories or title search in case none were furnished to the Mortgagee, and may pay therefor such sums as it may deem to be necessary, and if unpaid, may pay the mortgage tax on this instrument, and shall be the sole judge of the amount necessary to be paid therefor.

STATE OF MICHIGAN,

COUNTY OF Genesee

On this Fourth day of February, A. D. 19 52, before me, a Notary Public in and for said County, personally appeared Frank E. Pyscher and Alma P. Pyscher, his wife, to me known to be the persons described in and who executed the within mortgage and acknowledged the execution thereof to be their free act and deed.

My Commission expires
May 2, 1955


Notary Public, Genesee County, Michigan.
A. F. DeYonker

2430

FEB 6 '52

Michigan National Bank
Flint, Michigan

RECEIVED
FEB 6 1952

FEB 6 3 08 PM '52

CLERK COUNTY
FLINT, MICHIGAN

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B. ESTIMATED SETTLEMENT REQUIREMENTS.

1. Total amount, for purposes stated under A above \$ 9,800.00
2. Approximate cost of closing the transaction (including deposits for taxes and insurance premiums, \$ 200) \$ 200.00
3. Total \$ 10,100.00
4. Less amount of mortgage loan applied for \$ 7,100.00
5. Total investment required by mortgagor in cash or its equivalent \$ 2,900.00
6. Less amount already paid: (a) In cash, \$ 500.00; (b) Equity other than cash, \$; (c) Total \$ 20.00
7. Date paid Jan. 14, 1952 8. To whom paid Frank Marshall
9. Nature of other equity, if any listed in item 6 (b)
10. Balance of cash or its equivalent to be invested by mortgagor \$ 2,100.00
11. The amount indicated in item 10 will be provided from the following sources Assets of applicant
12. Have you incurred or do you intend to incur any indebtedness, secured or unsecured, other than that of the mortgage loan applied for, for any purpose connected with this transaction? No If answer is yes, give complete details, including description of any security offered: (Yes or no)

C. INDEBTEDNESS AGAINST PROPERTY AT (Always show address)

The following is a list of all mortgages, and other indebtedness against the property offered as security for the loan applied for, excluding taxes and assessments: (If there is NO indebtedness, insert "None.")

Name and Address of Holder	Type of Lien	Date of Mortgage or Lien	Original Amount	Present Unpaid Balance	Maturity Date

Indicate any which is FHA-insured mortgage loan above and give case number if available

REFINANCING CERTIFICATE

NOTE.—This certificate is required in all applications under Section 206 of the National Housing Act which involve the refinancing in whole or in part of an existing mortgage, where the proposed mortgage loan is to be made by a mortgagee other than the holder of the existing mortgage.

This is to certify that the undersigned has applied to the holder of the existing mortgage on the subject property for refinancing and that such holder, after reasonable opportunity, has failed or refused to make a loan on terms as favorable as those of the loan offered for refinancing as described in the application submitted herewith after taking into account applicable provisions, conditions, interest rate, mortgage insurance premium and costs to the mortgagor for legal services, appraisal fees, title expenses, and similar charges.

Mortgagor (s):

WARNING

Section 1010 of Title 18, U. S. C., "Federal Housing Administration transactions," provides: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, prints, utters, or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

RACIAL RESTRICTION CERTIFICATE

The undersigned hereby certifies that to his (their) best knowledge and belief, no restriction upon the sale or occupancy of the property covered by this application, on the ground of race, color, or creed, has been filed of record at any time subsequent to February 15, 1950; and that, until the mortgage has been paid in full or the contract of insurance otherwise terminated, he (they) will not file for record any restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed, or execute any agreement, lease, or conveyance affecting such property which imposes any such restriction upon its sale or occupancy.

NOTE.—The filing of record of such a restriction or covenant subsequent to February 15, 1950, will render a mortgage covering the property ineligible for mortgage insurance.

(Do not sign the following certification until the Mortgagors' Statement and Property Description have been completed.)

This Mortgagors' Statement and the Property Description submitted herewith are made by the undersigned for the purpose of obtaining the benefits of a mortgage loan to be insured under the provisions of the National Housing Act, and the undersigned hereby represent that to the best of their knowledge and belief, the statements, information, and descriptions contained herein are in all respects true, correct, and complete. The Commissioner and mortgagees may verify the statements contained herein by communicating with any of the persons or institutions named in this application. These statements will otherwise be treated as confidential.

(Signed) Frank E. Ryckner 38 Alfred F. Ryckner 33
Mortgagor. (Age) Co-Mortgagor. (Age)
13363 Canwood Junior 4233 1-15-51
(Mortgagor's present address) (Telephone number) (Date)
Frank E. Ryckner (3) Alfred F. Ryckner 46 4567
46 579

REAL ESTATE MORTGAGE

MTG
LIBER

946 PAGE 450

1952

THIS MORTGAGE made this twenty-eighth day of March
between Reinhart Radke and Evelyn J. Radke, his wife
of Flint

Michigan, hereinafter
referred to as the Mortgagors, and MICHIGAN NATIONAL BANK, a National Banking Association, having an office
in the city hereinafter designated, hereinafter referred to as the Bank,

WITNESSETH, That the Mortgagors, in consideration of the principal amount of
Seventy-five Hundred and no/100 - - - - - DOLLARS \$ 7,500.00
paid to them by the Bank, the receipt of which is hereby acknowledged, hereby mortgage and warrant to the Bank, its
successors and assigns, forever, the land and property situated in the City of Flint
County of Genesee and the State of Michigan, described as follows:

Lot 8 Block 211 of Modern Housing Corporation Addition No. 7,
according to the recorded plat thereof.

Exhibit 101 A-5
Sample Conventional Mortgage

1226a

22.85 Ex 101-7-5
710 58
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9. The Mortgagors shall pay to the Bank forthwith all amounts which the Bank shall pay pursuant to any of the aforesaid provisions, together with interest upon each of said amounts from the time of the payment thereof by the Bank until repayment by the Mortgagors at the rate of seven per cent per annum, and all such payments by the Bank shall be a further lien on said property.

10. That if damages are awarded for the taking of or injury to said property, or any part thereof, whether under the power of eminent domain or otherwise, all such damages shall be paid to the Bank, and if paid prior to the redemption from foreclosure of this mortgage, shall be applied to the satisfaction of all indebtedness secured by this mortgage.

11. If any person or persons shall succeed to the interest of the Mortgagors in said property, or any part thereof, the Bank may from time to time deal with and enter into such agreements with any successor in interest of the Mortgagors as it may desire. The Mortgagors, by reason thereof, shall not be deemed to have been released to any extent whatever from liability for the payment of the debt secured hereby.

12. If any default be made in the payment of any principal or interest due hereunder or according to said note, or in the performance of any other covenants of this mortgage or the note secured hereby, or any part thereof, by the Mortgagors, their heirs, executors, administrators, successors or assigns, or if they shall allow or permit any legal or equitable liens to stand or be placed against said property which will in any way affect or weaken the security herein given, or shall do any act whereby said property is made less valuable, and if such default shall continue for thirty days, then thereafter at the election of the Bank the whole of said principal and the interest thereon shall be immediately due and payable, and no notice other than the commencement of proceedings to foreclose this mortgage, or collect such moneys, shall be required to be given of such election. In case of any such default, the Bank is hereby authorized to sell and convey said property, with the appurtenances thereunto belonging, at public auction, and execute to the purchaser or purchasers; its, his, her, or their heirs, successors or assigns; good and sufficient deed or deeds of conveyance of said property, pursuant to the statute in such case provided; and after deducting said principal and interest, the amounts paid for taxes, assessments, insurance, repairs, encumbrances, abstracts and tax histories, with interest, as hereinbefore provided, all legal costs, and an attorney fee as provided by law, pay the surplus moneys, if any, to the Mortgagors, their representatives or assigns.

13. The word "Mortgagors" shall be read in the singular or plural and shall be construed in the masculine, feminine or neuter as the case may be.

14. The covenants and agreements contained in this mortgage shall run with the land, and shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the Mortgagors have hereunto set their hands and seals or, if a corporation, has caused its corporate name and seal to be hereunto affixed, the day and year first above written at Flint

Signed, Sealed and Delivered
in the Presence of:

A. F. DeYonker

Reinhardt Radke

Evelyn J. Radke

(L.S.)

(L.S.)

(L.S.)

(L.S.)

A. C. Smith

STATE OF MICHIGAN

COUNTY OF Genesee

SS.

On this 28th

day of

March

19 52, before me, a Notary Public

In and for said County, appeared Reinhardt Radke and Evelyn J. Radke, his wife

to me known to be the same persons who executed the foregoing instrument, who each acknowledged the same to be his or her free act and deed.

A. F. DeYonker

Notary Public,

Genesee

County, Michigan

My commission expires May 2, 1955

STATE OF MICHIGAN

COUNTY OF

SS.

On this

day of

19 , before me, a Notary Public

In and for said County, appeared

and

to me known, who being by me sworn, did say that they are respectively the

and

of

the corporation named in and which executed the within mortgage, that the seal affixed thereto is the corporate seal of said corporation, and that said mortgage was signed and sealed in behalf of said corporation by authority of its board of directors; and said persons acknowledged said mortgage to be the free act and deed of said corporation.

MICHIGAN NATIONAL BANK

APPLICATION FOR REAL ESTATE LOAN

The undersigned hereby makes application to the MICHIGAN NATIONAL BANK, for a loan of

Dollars \$ 7500.00

for 10 years, with interest at _____ per cent per annum, said principal and interest being payable in

monthly installments of \$ _____; and as security for said loan agrees to deliver to said Bank a first mortgage properly executed and duly recorded in the office of the Register of Deeds, in accordance with the laws of this State, on the premises described herein.

The undersigned further agrees to furnish a satisfactory abstract of title and tax histories to said property certified to date, to pay the expense of abstract examination, to have the buildings on said premises properly insured for the benefit of, and to deliver the policies to said Bank, with such insurance companies and in such amount as may be satisfactory to said Bank.

The proceeds of this loan, if granted, will be used for the following purposes:

Business Venture

Belgian Mortgage #2160 - 7500.00 - add 4 years

EXHIBIT I - PERSONAL HISTORY

A. - APPLICANTS

1. Name of husband Raisbart Raska Age 43 Years

2. Name of wife Evelyn Raska Age 41 Years

3. Address of applicants 2921 Birch St Flint Telephone 2-7923

4. Former address of applicants _____

5. Age of dependent children 10-13 Other dependents _____ Bank account at Citizens

6. If veterans, date discharged _____ Type of discharge _____ Length of Service _____ Years

B. - EMPLOYED AT

1. Name of employer Manufacturers Equip. Supply Co Address 119 Lyons St

2. Type of business Equipment Supply Position occupied Sales Man

3. Years with present employer _____ Name and title of superior Carlson & Jackson, President

4. Name of former employer Fisher Body Div Address 1000 Lake Rd - Flint

5. Is wife employed No Name of Employer _____ Annual Income \$ _____

C. - IN BUSINESS FOR SELF

1. Name of business _____ Address _____

2. Type of business _____ Sole owner, partner, or title in corporation _____

3. Years in present business _____ Business bank account at _____

Sample Conventional Application for Real Estate Loan

Exhibit 101 A-5

1228a

EXHIBIT 101 A-5 - DESCRIPTION OF PROPERTY

A - LOCATION

1. 1421 Barth St 2nd San Jose Michigan
Number Street City County State
2. The property is on the South side of street between Collins & Hyman
3. Brief legal description Lot 8, Blk VII - Modern Day Corp #1
4. Size of lot 30' x 115' 36' x 115' Street paved, graveled, or unimproved Sidewalks yes

B - IMPROVEMENTS

1. Type of building: Single dwelling, duplex, apartment, store, etc. Single
2. Size of building (exclusive of porches) 36 x 30 Year built 1946 Number of stories 2
3. Number and name of rooms (exclusive of bathrooms) 6 with attached plastered garage
(a) Basement With Recreation Room, porch, floor - 14' x 20'
(b) 1st floor
(c) 2nd floor
(d) 3rd floor
4. Bathrooms: Number 1 Wall material Plaster Floor material oak
5. Porches Front Fireplace Other features Terrace
6. Materials: Exterior walls (brick, brick veneer, frame, stucco, etc., or combination) Frame
Foundation Concrete Roof Asphalt Floors Oak
Interior walls Plaster Trim Wood
7. Equipment: Electricity yes Gas yes Water yes Sewer yes
Type of heating system Gas furnace Fuel used Gas Laundry tubs yes
Type of water heater Automatic Other equipment
8. Garage: Attached or detached Attached Car capacity one Construction of roof
Of walls Of floor Of driveway
9. Condition of improvements: (Indicate if in need of repair)
(a) Exterior: Roof Paint Foundation Sheet metal
Walks Garage Driveway Other
(b) Interior: Floors Walls Lighting Woodwork
Heating Plumbing Basement Other

C - VALUATION AND TAXES

1. Date acquired Apr 1946 Terms of purchase Cash to Mortgage Price Paid \$ 1150.00
2. Cost of improvements: (Describe) Terrace & Recreation Room, floor, porch, etc. 300.00
3. Present estimated value \$ 1500.00 Assessed value \$ 1000.00 Total investment \$ 1150.00
4. Amount of fire insurance \$ 7000.00 Amount of windstorm insurance \$
5. Taxes paid thru 19 41 Amount delinquent \$ None For years
6. Special assessments: (Describe) When due Amount \$

D - TITLE AND LIENS

1. Deed in name of Rena Hart + Evelyn Rouse
2. List below in detail all mortgages, contracts or other liens on this property:

CHARACTER OF LIEN	NAME OF HOLDER	DATE OF LIEN	DUE DATE	ORIGINAL AMOUNT	BALANCE	INTEREST PAID TO	TERMS OF PAYMENT
First mortgage	<u>Mich. Nat'l Bank</u>	<u>4/30/46</u>		<u>1000.00</u>	<u>3427</u>	<u>date 4-1-46</u>	<u>wholly</u>
Second mortgage							
Buying on contract							
Selling on contract							

MORTGAGE NOTE

\$ 6,000.00

Flint, Michigan
February 8, 19 52.

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise(s) to pay to the order of

MICHIGAN NATIONAL BANK, a National Banking Association

the principal sum of
Six Thousand and no/100 ----- Dollars
(\$ 6,000.00), with interest from date, at the rate of four per centum (4 %) per annum on the unpaid balance until paid. The said principal and interest shall be payable at the office of Michigan National Bank

at Flint, Michigan,
or at such other place as the holder may designate in writing delivered or mailed to the debtor, in monthly installments of Thirty-six and 36/100 - - Dollars (\$ 36.36), commencing on the first day of March, 19 52, and continuing on the first day of each month thereafter until this note is fully paid, except that, if not sooner paid, the final payment of principal and interest shall be due and payable on the first day of February, 19 72.

Privilege is reserved to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or one hundred dollars (\$100.00), whichever is less.

If any deficiency in the payment of any installment under this note is not made good prior to the due date of the next such installment, the holder of this note may, without notice, at its option declare all the remainder of said debt at once due and payable, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

This note is secured by Mortgage of even date executed by the undersigned on certain property described therein and represents money actually used for the acquisition of said property or the improvements thereon.

Demand, protest, presentment, and notice of nonpayment are hereby waived.

Exhibit 101 A-9
Sample V.A. Mortgage Note

1230a

MORTGAGE

MTG 942 PAGE 58

THIS MORTGAGE made this eighth day of February, 1952, between

Kenneth A. Johnson and Wanda M. Johnson, his wife,

Flint, County of Genesee, State of Michigan, hereinafter referred to as the Mortgagor,
and MICHIGAN NATIONAL BANK, a National Banking Association

a corporation organized and existing under the laws of United States of America, hereinafter referred to as the Mortgagee,

WITNESSETH: That the Mortgagor for and in consideration of the sum of Six Thousand and no/100- - - - - Dollars (\$6,000.00), the receipt whereof is hereby acknowledged, and for the purpose of securing the repayment of said sum, with interest as hereinafter provided, and the performance of the covenants hereinafter contained, hereby mortgages, warrants and assigns unto the Mortgagee, its successors and assigns, the lands, premises, and property, situated in the City of Flint, County of Genesee, State of Michigan, described as follows, to wit:

Lot 287 of West Court Gardens, according to the recorded plat thereof.

together with the improvements, hereditaments, and appurtenances thereunto belonging, and the rents, issues and profits thereof; and all fixtures now or hereafter attached to or used in connection with the premises herein described and in addition thereto the following-described household appliances, which are, and shall be deemed to be, fixtures and a part of the realty, and are a portion of the security for the indebtedness herein mentioned;

together with the improvements, hereditaments, and appurtenances thereunto belonging, and the rents, issues and profits thereof; and all fixtures now or hereafter attached to or used in connection with the premises herein described and in addition thereto the following-described household appliances, which are, and shall be deemed to be, fixtures and a part of the realty, and are a portion of the security for the indebtedness herein mentioned;

Ex 101-A-9
7/10/58
w

TO HAVE AND TO HOLD the above-mortgaged property unto the said Mortgagee forever, provided that if the Mortgagor shall pay the principal and all interest as provided in a certain promissory note executed

Exhibit 101 A-9
Sample V.A. Mortgage

1231a

by said Mortgagor to said Mortgagee of even date herewith and shall pay all other sums hereinafter provided for, and shall well and truly keep and perform all of the covenants herein contained, then this mortgage and the aforesaid note shall be null and void; otherwise to remain in full effect.

The Mortgagor hereby covenants as follows:

1. For value received and the consideration aforesaid, the Mortgagor hereby agrees to pay to the Mortgagee at its office in City of Flint, in the County of Genesee, State of Michigan, or at such other place as the holder of the note may designate in writing delivered or mailed to the Mortgagor, the principal sum of Six Thousand and no/100 - - - - - Dollars (\$ 6,000.00), with interest from date at the rate of four per centum (4 %) per annum on the unpaid balance until paid. Said principal and interest shall be payable in monthly installments of Thirty-six and 36/100 - - - - - Dollars (\$ 36.36), commencing on the first day of March, 19 52, and continuing on the first day of each month thereafter until the principal and interest are fully paid, except that if not sooner paid, the final payment of principal and interest, shall be due and payable on the first day of February, 19 72, according to the terms of a promissory note bearing even date herewith executed by the Mortgagor to the Mortgagee.

2. He will promptly pay the principal of and interest on the indebtedness evidenced by the said note, at the times and in the manner herein provided. Privilege is reserved to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or one hundred dollars (\$100.00), whichever is less.

3. In order more fully to protect the security of this mortgage, the Mortgagor, together with, and in addition to, the monthly installments of principal and interest payable under the terms of the note secured hereby, will pay to the Mortgagee the following sums:

- (a) A sum equal to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other hazard insurance covering the mortgaged property, plus taxes and assessments next due on the mortgaged property (all as estimated by the Mortgagee and of which the Mortgagor is notified) less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, taxes, and assessments will become delinquent, such sums to be held by Mortgagee in trust to pay said ground rents, premiums, taxes, and special assessments.
- (b) The aggregate of the amounts payable pursuant to subparagraph (a) and those payable on the note secured hereby, shall be paid in a single payment each month, to be applied to the following items in the order stated:
 - (I) ground rents, taxes, assessments, fire and other hazard insurance premiums;
 - (II) interest on the note secured hereby; and
 - (III) amortization of the principal of said note.

Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the Mortgagor prior to the due date of the next such payment, constitute an event of default under this mortgage. The Mortgagee may collect a "late charge" not to exceed an amount equal to four per centum (4%) of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments.

Together with the easements, hereditaments and appurtenances thereunto, now or hereafter belonging, or in anywise appertaining, and all buildings and other structures now or hereafter situated on said land, all window and door screens, window insulating units, storm windows and doors, awnings, cabinets, shelving, counters, partitions, elevators, in-a-door beds, curtain and shade fixtures, shades, venetian blinds, linoleum and similar coverings, gas and electric fixtures, built-in refrigerators, ventilators and incinerators, laundry equipment, pumps, dynamos, generators, furnaces, and generally all heating, lighting, air conditioning, ventilating, refrigerating, cleaning, incinerating, power, plumbing and other fixtures, machinery, appliances, apparatus, equipment and devices, which may now or at any time hereafter be situated thereon and attached thereto, to secure the performance of the covenants hereinafter contained.

This mortgage is given upon condition that if the Mortgagors shall pay to the Bank, its successors or assigns, said principal amount with interest thereon, according to the terms of a promissory note of this date executed by the Mortgagors, and any other indebtedness heretofore or hereafter contracted by the Mortgagors and owing to the Bank, but not in excess of said original principal amount, then this mortgage and said note shall cease. The rate of interest on all indebtedness secured hereby shall be seven per cent per annum from the date of default in the terms of such indebtedness until redemption from sale under foreclosure of the mortgaged property, notwithstanding any provisions to the contrary in the evidence of such indebtedness.

The Mortgagors covenant with the Bank that:

1. The Mortgagors shall pay said principal amount and interest thereon, according to the terms of said note.
2. The Mortgagors hold a free, clear and unencumbered fee simple title to said mortgaged property and they will forever warrant and defend the same.
3. The Mortgagors in addition to, and at the times of the monthly payments of principal and interest, shall pay to the Bank such additional amounts as shall be estimated from time to time by the Bank as necessary for the establishment of a reserve fund from which, insofar as it may be sufficient, the Bank shall pay when due all taxes, assessments and insurance premiums on said property. If the Bank has not by reason of said payments, a sufficient sum to pay such taxes, assessments and insurance premiums, the Mortgagors shall forthwith on demand pay to the Bank a sum, which with the sums already paid to the Bank as aforesaid, will be sufficient to pay in full all such taxes, assessments and insurance premiums. The Bank shall apply, at the time of the commencement of foreclosure proceedings or at the time the property is otherwise acquired after default, the balance then remaining in such reserve fund as a credit first against the interest and then the principal remaining unpaid under said note. If the payments made by the Mortgagors into such fund shall exceed the amount of the payments by the Bank for taxes, assessments and insurance premiums, the Bank may return said excess to the Mortgagors or apply the same to any payment then due or to become due on said note.
4. The Mortgagors shall pay when due all ground rents, taxes, assessments, and other charges and encumbrances which now are, or shall hereafter be or appear to be, a lien upon all or any part of said property and for which provision has not been made hereinbefore, and in default thereof, or in default in the payment to the Bank of the amounts required in paragraph 3 hereof, the Bank may, without demand or notice, pay the said rents, taxes, assessments, charges or encumbrances, in such amounts as the Bank in its sole judgment may deem to be necessary therefor.
5. The Mortgagors shall insure the improvements now existing or hereafter erected on said property against loss by fire and other hazards and casualties in such companies, in such amounts, and for such periods as shall be approved by the Bank, and shall pay when due all premiums on such insurance for which provision has not been made hereinbefore. All insurance policies and renewals thereof shall be held by the Bank and have attached thereto loss payable clauses in favor of and in forms approved by the Bank. In the event of loss the Mortgagors shall give immediate notice by mail to the Bank, which may make proof of loss if not made promptly by the Mortgagors. Any insurance company is authorized and directed to make payment for such loss directly to the Bank, and the insurance proceeds or any part thereof may be applied by the Bank either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event of foreclosure of this mortgage or other transfer of title to the mortgaged property in satisfaction of the indebtedness secured hereby, all right, title and interest of the Mortgagors in and to any insurance policies then in force shall pass to the purchaser or grantees. If the Mortgagors shall fail to procure such insurance, the Bank may procure the same and pay the premiums thereon.
6. The failure of the Mortgagors to pay or to provide for the payment of any taxes assessed against said property or any insurance premium upon a policy covering any of said property shall constitute waste and shall entitle the Bank where provided by law to the appointment by a court of competent jurisdiction of a receiver of the property for the purpose of preventing such waste, which receiver, subject to the order of the court, may collect the rents and income from said property and exercise such control over said property as to such court may seem proper.
7. The Mortgagors shall abstain from the commission of waste on said property and shall keep the buildings and all mortgaged equipment thereon in good repair and shall comply promptly with all laws, ordinances, regulations and requirements of any governmental body affecting said property or the use thereof. If said property or any part thereof shall require inspection, repair or care of any kind which the Mortgagors shall fail to provide, the Bank may, after notice to the Mortgagors, enter, inspect, repair and care for said property and pay such amounts therefor, as in its sole judgment it may deem necessary.
8. If any default be made in the covenants of this mortgage, the Bank may cause any abstracts of title and tax histories in its possession for said property to be certified to date, or may procure new abstracts of title and tax histories if none were furnished to the Bank, and may pay therefor such amounts as in its sole judgment it may deem necessary.

4264

1932 6444

REAL ESTATE MORTGAGE

RECORDED
Earl M. Smith
REGISTER OF DEEDS
JAN 1 2 57 PM '32
MICHIGAN
FLINT, MICHIGAN

MICHIGAN NATIONAL BANK

REGISTER'S OFFICE

Michigan, _____ County,

Received for record the _____

do of _____ 19 _____

at _____ o' _____ M., and recorded

in Liber _____ of Mortgages, in

Page _____

475
Michigan National Bank
Flint, Michigan

Register of Deeds in and for said County

My commission expires

EXHIBIT II — FINANCIAL STATEMENT

ASSETS

Cash on hand and in banks \$ 650.00
 Market value of stocks and bonds \$ 2500.00
 Cash surrender value of life insurance \$ 5344.41
 Real estate: (Location and estimated value)
 (1) 441 Booth St \$ 1500.00
 (2) 109 5th St - Rosemount \$ 8500.00
 (3) Mick \$ _____
 Other assets: (Indicate character)
 (1) 1450 SV Bank \$ 1850.00
 (2) Accrued Insurance Dividend \$ 1300.00
TOTAL ASSETS \$ 35144.41

LIABILITIES

Notes payable to banks, etc. \$ 1251.80
 Notes payable to others \$ _____
 Loans on life insurance policies \$ 1496.46
 Mortgages and contracts payable:
 (1) To Citizens - Sears \$ 8427.00
 (2) To M. H. Oatley Bank \$ 3528.00
 (3) To _____ \$ _____
 Other obligations: (Indicate character)
 (1) _____ \$ _____
 (2) _____ \$ _____
TOTAL LIABILITIES \$ 9997.26

Life Insurance } Company Metrop Life
 } Company Equitable Life

Amount \$ 70000.00 Beneficiary Lothys J. R...
 Amount \$ 10000.00 Beneficiary "

ANNUAL INCOME

Salary, wages or commissions: 1951 For the year \$ 10733.48
 \$ _____ per _____
 Annual income from investments
 Dividends \$ 15.00
 Interest \$ _____
 Rentals \$ _____
 Other \$ _____
TOTAL ANNUAL INCOME \$ 10818.48

ANNUAL CHARGES AGAINST INCOME

Payments on mortgages and contracts \$ 2157.00
 Real estate taxes for year \$ 1400.00
 Annual insurance premiums ALB \$ 400.00
 Annual requirements for income tax \$ 1000.00
 Payments on other loans for year \$ 704.80
 Other \$ _____
 Total annual charges against income \$ 4961.80
 Bal of income available for living expenses \$ _____
TOTAL \$ _____

Is any change in income anticipated? Give details _____

This Section to Be Used by Bank Only
DISPOSITION

Date _____

☐ Loan approved for \$ _____
☐ Loan Declined

Remarks: _____

4. List below in detail all mortgages, contracts or other liens on this property:

CHARACTER OF LIEN	NAME OF HOLDER	DATE OF LIEN	DUE DATE	ORIGINAL AMOUNT	BALANCE	INTEREST PAID TO	TERMS OF PAYMENT
First mortgage	Wichita Nat'l Bank	4-30-46		\$5000.00	3467	date	4% - monthly
Second mortgage							
Buying on contract							
Selling on contract							

E - OCCUPIED BY

1. Name of present occupant Owner
 2. Occupant is the Applicant yes

*Contract purchaser

Tenant

The undersigned declares that the statements contained in the foregoing exhibits are true, correct and complete in every respect. Accompanying this application is the sum of \$ 2700 for the appraisal of this property, which fee is not returned if the appraisal is made.

Date of application March 20, 1952

Signed

Reinhardt Radtke
Evelyn J. Radtke

**This Section to Be Used by Bank Only
 APPRAISER'S REPORT**

Valuation								
Lot	Size	x		\$		Base		per ft.
Building	Size	x		\$		Base		
Garage	Size	x		\$		Base		
Other	Size	x		\$		Base		
TOTAL				\$				

Remarks

Signed

Signed

Signed

Date Appraised

19

Demand, protest, presentment, and notice of nonpayment are hereby waived.

Plt's Ex 101A-9
7/2/58
1/1/62

Kenneth A. Johnson
Kenneth A. Johnson

Wanda M. Johnson
Wanda M. Johnson

THIS IS TO CERTIFY that this is the note described in and secured by mortgage of even date and in the same principal amount as herein stated and secured by real estate situated in the county of Genesee, State of Michigan.

Dated this eighth day of February, 1952.

A. C. Smith

A. C. Smith
Notary Public in and for the County of Genesee
State of Michigan.

My commission expires February 26, 1954.

10-54820-1 U. S. GOVERNMENT PRINTING OFFICE

972 page 572

MEMORANDUM OF FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF FLINT.

REAL ESTATE MORTGAGE

This Mortgage, Made the Ninth day of April
in the year of our Lord one thousand nine hundred Forty Nine

WITNESSETH: That Gerald H. Barton and Jean G. Barton, his wife

hereinafter referred to as the "Mortgagors" whether singular or plural, MORTGAGE AND WARRANT to FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF FLINT, at Flint, Michigan, a corporation organized under the laws of the United States, hereinafter referred to as the "Mortgagee," the following described real estate situated in the Township of Barton, Genesee County, Michigan, to wit:

Lots 54 and 55 of Superior Heights Subdivision,
according to the plan thereof.

4. If the total of the payments made by the Mortgagor under (a) of paragraph 3 preceding shall exceed the amount of payments actually made by the Mortgagee for ground rents, taxes, or assessments or insurance premiums, as the case may be, such excess shall be credited on subsequent payments to be made by the Mortgagor for such items. If, however, such monthly payments made by the Mortgagor shall not be sufficient to pay such items when the same shall become due and payable, then the Mortgagor shall pay to the Mortgagee any amount necessary to make up the deficiency. Such payments shall be made within thirty (30) days after written notice from the Mortgagee stating the amount of the deficiency, which notice may be given by mail. If at any time the Mortgagor shall tender to the Mortgagee, in accordance with the provisions of the note secured hereby, full payment of the entire indebtedness represented thereby, the said Mortgagee shall, in computing the amount of such indebtedness, credit to the account of the Mortgagor any credit balance remaining under the provisions of (a) of paragraph 3 hereof. If there shall be any default under any of the provisions of this mortgage resulting in foreclosure or public sale of the premises covered hereby or if Mortgagee acquires the property otherwise after default, the Mortgagee shall apply, at the time of the commencement of such proceeding or at the time the property is otherwise acquired, the amount then remaining to credit of Mortgagor under (a) of paragraph 3 preceding as a credit on the interest accrued and unpaid and the balance to the principal then remaining unpaid on said note.

5. He will promptly pay all ground rents, insurance premiums, taxes, assessments, water charges, and any governmental or municipal charges, fines, or impositions for which provision has not been made herein, and, in such cases, promptly deliver the official receipts therefor to the Mortgagee. If the Mortgagor fails to make such payments, the Mortgagee is hereby authorized at its option to make them, and any sums so advanced shall be added to the amount of the indebtedness hereby secured, shall bear inter-

22
provided, that said right, power and privilege hereby granted may be enforced and exercised by the Mortgagee, at its option, in case of failure of the Mortgagors to perform any of the covenants or conditions of this mortgage, or any evidence of indebtedness secured hereby. The Mortgagee, shall apply all sums collected under the power hereby granted, first, to the payment of interest upon any and all sums secured hereby, and the remainder shall be applied upon the unpaid balance of the indebtedness hereby secured, rendering the surplus, if any there should be, to said Mortgagors.

Ninth. Should default be made in the payment of any of the sums of money above mentioned, or in the performance of any of the covenants or agreements herein contained, then and in such case it shall be lawful for said Mortgagee, and said Mortgagors do hereby empower and authorize said Mortgagee, to grant, bargain, sell, release and convey the said lands and premises, with the appurtenances at public auction, and on such sale to make and execute to the purchaser or purchasers, his, her or their heirs and assigns, forever, sufficient deeds of conveyance in law, pursuant to the statute in such case made and provided, and out of the proceeds of such sale to retain all sums then due hereunder and secured hereby, including any attorney fee provided for by law, rendering the surplus, if any there should be to said Mortgagors.

Tenth. The Mortgagee may, at its option, extend the time for payment of said indebtedness, or reduce the payments thereon, or accept a renewal note or notes therefore, without the consent of any junior lien holder, and without the consent of the Mortgagors, if the Mortgagors have parted with the title to said property, and any such extension, reduction or renewal shall not release the Mortgagors, or any endorser or guarantor, from liability for such indebtedness, or affect the priority of this mortgage over any junior lien, or impair the security hereof in any manner whatsoever, and no failure on the part of the Mortgagee to exercise any of its rights hereunder for defaults or breaches of covenants shall be construed to prejudice its rights in the event of any other subsequent default or breach of covenant, and no delay on the part of the Mortgagee in exercising any of such rights shall be construed to preclude it from the exercise thereof at any time during the continuance of any such default, and the Mortgagee may enforce any one or more remedies hereunder successively or concurrently at its option.

Eleventh. All rights and obligations hereunder shall extend to and be binding, upon the several heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the said mortgagors have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in presence of:

[Signature]

H. E. Parker

[Signature]
Charlotte Cheppard

[Signature]
John U. Burton

(L. S.)

(L. S.)

[Signature]
John U. Burton

(L. S.)

(L. S.)

est at the rate of four per centum (4%) per annum from the date of payment, shall be secured hereby ratably and on a parity with all other indebtedness secured hereby, and shall be payable thirty (30) days after demand, or as may be otherwise agreed in writing between the parties hereto.

6. He will continuously maintain hazard insurance, of such type or types and amounts as Mortgagee may from time to time require, on the improvements now or hereafter on said premises, and except when payment for all such premiums has theretofore been made under (a) of paragraph 3 hereof, he will pay promptly when due any premiums therefor. All insurance shall be carried in companies approved by the Mortgagee and the policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the Mortgagee. In event of loss Mortgagor will give immediate notice by mail to the Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee instead of to the Mortgagor and the Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In event of foreclosure of this mortgage, or other transfer of title to the mortgaged property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee.

7. He will abstain from the commission of waste on said premises and keep the buildings thereon and all equipment therein mortgaged in good repair, and promptly comply with all laws, ordinances, regulations, and requirements of any governmental body affecting the said mortgaged premises.

8. Upon request of the Mortgagee the Mortgagor shall execute and deliver a supplemental note or notes for the sum or sums advanced by the Mortgagee for the alteration, modernization, improvement, maintenance, or repair of said premises, for taxes or assessments against the same and for any other purpose authorized hereunder. Said note or notes shall be secured hereby on a parity with and as fully as if the advance evidenced thereby were included in the note first described above. Said supplemental note or notes shall bear interest at four per centum (4%) per annum and shall be payable in approximately equal monthly payments for such period as may be agreed upon by the creditor and debtor. Failing to agree on the maturity, the whole of the sum or sums so advanced shall be due and payable thirty (30) days after demand by the creditor. In no event shall the maturity extend beyond the ultimate maturity of the note first described above.

9. Should any default be made in the covenants of this mortgage, the Mortgagee may cause the abstract or abstracts of title and the tax histories of said premises to be certified to date, or may procure new abstracts of title and tax histories or title search in case none were furnished to the Mortgagee, and may pay therefor such sums as may reasonably be deemed to be necessary.

10. In the event damages are awarded for the taking of or injury to the property herein mortgaged, whether such taking or injury be done under the power of eminent domain or otherwise, any and all such damages arising thereunder shall be paid to the Mortgagee, to be applied toward the satisfaction of any and all indebtedness existing by virtue of this mortgage whether or not said indebtedness be then due.

11. He will pay to the Mortgagee forthwith the amounts of all sums of money which the Mortgagee shall pay or expend pursuant to the provisions, or any of them, hereinbefore contained, together with interest, upon each of said amounts until paid from the time of the payment thereof at the rate of four per centum (4%) per annum. Such payments shall be secured by this mortgage.

Exhibit 101 A-9
Sample V.A. Mortgage

1233a

Exhibit 101 A-9
Sample V.A. Mortgage
1234a

15. Upon default being made in the payment of the sums of money herein agreed to be paid or in the performance of any of the covenants or agreements herein contained according to the terms hereof or of the note secured hereby the Mortgagee is hereby authorized and empowered to sell or cause to be sold the property hereby mortgaged, and to convey the same to the purchaser, pursuant to the statute in such case made and provided, and out of the proceeds of such sale to retain the moneys due under the terms of this mortgage, the cost and charges of such sale, the attorney's fee provided by statute, and the amount necessary to reimburse the Veterans Administration for any sums paid by it on account of the guaranty or insurance of the indebtedness secured hereby, rendering the surplus moneys (if any) to said Mortgagor. In the event of public sale, the mortgaged premises may, at the option of the Mortgagee, be sold in one parcel.

16. Failure of the Mortgagor to pay any part of any installment of taxes, assessments or insurance premiums under the provisions of paragraph 3 hereof, or failure of the Mortgagor to pay any taxes, assessments, governmental charges or premiums on any policy of insurance covering any part of the mortgaged property as required by these presents, at the time or times when such items are due and payable, shall constitute waste within the meaning of Act 171 of the Public Acts of Michigan of 1937 (Stat. Ann. Sec. 27.1834).

17. If the indebtedness secured hereby be guaranteed or insured under the Servicemen's Readjustment Act, as amended, such Act and Regulations issued thereunder and in effect on the date hereof shall govern the rights, duties and liabilities of the parties hereto, and any provisions of this or other instruments executed in connection with said indebtedness which are inconsistent with said Act or Regulations are hereby amended to conform thereto.

18. The mailing of a written notice and demand by depositing it in any post office, station or letter box, enclosed in a postpaid envelope addressed to the owner of record of said mortgaged premises, and directed to said owner at the last address actually furnished to the holder of this mortgage, or if none, to said owner at said mortgaged premises, shall be sufficient notice and demand in any case arising under this instrument, and required by the provisions thereof or by law.

The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders and the term "Mortgagee" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

Where two or more persons execute this instrument, the obligation hereunder, and each grant of lien hereby made, shall be that of all and of any two or more jointly and of each severally.

IN WITNESS WHEREOF the Mortgagor(s) have set their hand(s) and seal(s) the day and year first above written.

Signed, sealed, and delivered in the presence of

[Signature]
A. Smith
[Signature]
C. M. Truman, Jr.

[Signature] [L. S.]
[Signature] [L. S.]
[L. S.]
[L. S.]

MICHIGAN NATIONAL BANK

APPLICATION FOR REAL ESTATE LOAN

The undersigned hereby makes application to the MICHIGAN NATIONAL BANK, for a loan of

6000.00

Dollars \$ 6000.00

for 20 years, with interest at 4 per cent per annum, said principal and interest being payable in monthly installments of \$ 36.36 and as security for said loan agrees to deliver to said Bank a first mortgage properly executed and duly recorded in the office of the Register of Deeds, in accordance with the laws of this State, on the premises described herein.

The undersigned further agrees to furnish a satisfactory abstract of title and tax histories to said property certified to date, to pay the expense of abstract examination, to have the buildings on said premises properly insured for the benefit of, and to deliver the policies to said Bank, with such insurance companies and in such amount as may be satisfactory to said Bank.

The proceeds of this loan, if granted, will be used for the following purposes:

Buy new home 3913 Black St. 6400.00
 700.00 down 5160.00
 3600.00

EXHIBIT I - PERSONAL HISTORY

A. APPLICANTS

1. Name of Applicant: Robert A. Johnson Age 28 Years

2. Name of Applicant: Margaret M. Johnson Age 25 Years

Address: 3401 Columbia Ave Telephone 2-7217

4. Former address of applicants

5. Age of dependent children: 2-4 Other dependents: None Bank account at: Home

6. If veterans, date discharged: 3-24-48 type of discharge: Hon Length of Service: 3 Years

B. EMPLOYED AT

1. Name of employer: Brush Address: Michigan

2. Type of business: Engineer Position occupied: Inspector

3. Years with present employer: 9 1/2 Name and title of superior: Ben Whitman

4. Name of former employer: No Address: No

5. Is wife employed: No Name of Employer: No Annual income \$: No

C. IN BUSINESS FOR SELF

1. Name of business: No Address: No

2. Type of business: No Sole owner, partner, or title in corporation: No

3. Years in present business: No Business bank account at: No

Exhibit 101-A-9
 Sample V.A. Application for Real Estate Loan
 1235m

EXHIBITS 102 A-1 AND 102 A-11

Exhibit 102 A-1 (pp. 1237a through 1243a herein) is an example of the refinancing by Michigan National Bank of an earlier saving and loan association mortgage on the same residence. Exhibit 102 A-11 (pp. 1244a through 1249a herein) is an example of the refinancing by a savings and loan association of an earlier Michigan National Bank mortgage on the same residence. To avoid unnecessary duplication, the other 68 similar examples of refinancing from each community in which Michigan National Bank operates, which were introduced at trial, have not been printed herein. For the purpose of brevity, photographs of the residences involved have likewise been omitted from this appendix.

And the Mortgagors do hereby further covenant and agree with the Mortgagee as follows:

First. That the Mortgagors will pay to the Mortgagee said principal sum with interest thereon as herein provided, and any other sum, with interest thereon, paid by the Mortgagee under the covenants and conditions of this mortgage:

Second. That the Mortgagors will, until the debt hereby secured is fully satisfied, pay all taxes and assessments levied on said premises, and pay all premiums for keeping all insurable property covered hereby insured against loss and damage by fire and windstorm, with such insurances and in such amounts and manner as shall be, in the judgment of the Mortgagee, necessary or proper. The said taxes and assessments will be paid by the Mortgagors as follows:

commencing on May 1, 1949 next, and monthly thereafter, until the debt hereby secured is fully satisfied, except as hereinafter provided, the Mortgagors will deposit with

the Mortgagee not less than the sum of (\$) Dollars to be used in the payment of said taxes and assessments, when due, and in the event that sufficient funds for that purpose have not been deposited by the Mortgagors with the Mortgagee, when any such taxes or assessments become due and payable, the Mortgagors will forthwith pay the balance thereof to the Mortgagee. In the event said monthly payment shall, at the expiration of three (3) years from the date hereof, be found to have been insufficient or more than the necessary amount to satisfy the taxes and assessments which accrued during said period, the Mortgagee shall apply any surplus then accumulated upon the principal, and shall increase or reduce the monthly payment for taxes and assessments to such amount as will, in the judgment of the Mortgagee, be sufficient to satisfy the taxes and assessments to accrue during the following three year (3) period, and a similar application and adjustment shall be made every three years (3) thereafter, until the debt hereby secured is fully satisfied.

Third. That the Mortgagors will abstain from the commission of waste on said premises and will keep the buildings which are or shall be located thereon in good repair.

Fourth. That the Mortgagors will now and, at all times, during the life of this mortgage, at the cost and expense of the Mortgagors, promptly comply with all laws, ordinances, regulations or requirements of any lawfully constituted authority affecting said mortgaged premises; and will now and at all times do and perform all things necessary or required by law to perfect and maintain this mortgage as a legally enforceable security for the payment of all sums secured or intended to be secured hereby.

Fifth. That if default be made in the payment by the Mortgagors of any of the aforesaid taxes, or assessments, as above covenanted and agreed, or in keeping any other agreement herein contained, the Mortgagee may pay said taxes and special assessments, may make all necessary repairs, and may cause to be extended and certified the abstract or abstracts and tax histories of the mortgaged premises, or may procure new abstracts and tax histories in case none were furnished to the Mortgagee, and the moneys paid for any one or all of said purpose shall from time of their payment be due and payable with interest thereon at the rate of six per cent per annum, payable monthly until paid, and shall constitute a further lien upon said premises under this mortgage. In case of a foreclosure of this mortgage, the abstracts of title shall be absolute property of the Mortgagee.

Sixth. That in the event the mortgaged premises, or any part thereof, are taken under the power of eminent domain, the entire award shall be paid to the Mortgagee and applied first upon the principal last maturing hereunder, and the Mortgagee is hereby empowered in the name of the Mortgagors, or the Mortgagors' assigns, to receive and give acquittance for any such award or judgment, whether it be joint or several.

12. Upon any default in the performance of the covenants herein, the Mortgagee shall be entitled to enter into peaceable possession of the properties herein mortgaged and to receive the rents and profits therefrom and to apply the same toward the payment of taxes, upkeep of the property, and the fulfillment of the covenants of this mortgage, or, at his option, to cause a Receiver to be appointed.

13. Should any default be made in the payment of principal or interest, or in the performance of any other covenant of this mortgage or the note secured hereby or any part thereof, when the same is payable or the time of performance has arrived, as above provided, then all the remainder of the aforesaid sum with all sums due hereunder shall at the option of the Mortgagee without notice become immediately payable thereafter; although the period above limited for the payment thereof may not have expired, anything hereinbefore or in said note contained to the contrary notwithstanding, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time.

14. No sale of the premises hereby mortgaged, no forbearances on the part of the Mortgagee and no extension of the time for the payment of the debt hereby secured given by the Mortgagee shall operate to release, discharge, modify, change or affect the original liability of the Mortgagor herein nor shall the lien of this instrument be altered thereby. In the event of the sale or transfer by operation of law or otherwise, of all or any part of said mortgaged premises, the said Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to said premises or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

W. J. S. 17

2810

31 1226 FEB 13 1952

STATE OF MICHIGAN

Mortgage

Kenneth A. Johnson and Wanda M.
Johnson, his wife.

TO

MICHIGAN NATIONAL BANK

RECORDED

REGISTER'S Office
Feb 13 1952

Received for Record Feb 11 PM '52

of
FLINT, MICHIGAN

at o'clock M., and

Recorded in

of Mortgages on Page

38
Register.

Michigan National Bank
Flint, Michigan

STATE OF MICHIGAN,
COUNTY OF Genesee

On this eighth day of February, A. D. 1952, before me, a Notary Public in and for said County, personally appeared Kenneth A. Johnson and Wanda M. Johnson, his wife, to me known to be the persons described in and who executed the within mortgage and acknowledged the execution thereof to be their free act and deed.

A. C. Smith
Notary Public, Genesee County, Michigan.
A. C. Smith

My commission expires
February 26, 1954

EXHIBIT II — FINANCIAL STATEMENT

ASSETS

Cash on hand and in banks E \$ 754

Market value of stocks and bonds \$

Cash surrender value of life insurance \$

Real estate: (Location and estimated value)

(1) none \$

(2) none \$

(3) none \$

Other assets: (Indicate character)

(1) 3000 \$ 3000

(2) 36 \$ 75

TOTAL ASSETS \$ 3150

LIABILITIES

Notes payable to banks 11.00 \$

Notes payable to others \$

Loans on life insurance policies \$

Mortgages and contracts payable \$

(1) To \$

(2) To \$

(3) To \$

Other obligations: (Indicate character)

(1) Current Acc \$

(2) none \$

TOTAL LIABILITIES \$ 11.00

Life Insurance } Company Scout

Company

Amount \$ 3500 Beneficiary wife

Amount \$ Beneficiary

ANNUAL INCOME

Salary, wages or commissions: \$ _____ per For the year \$3200

Annual income from investments:

Dividends \$

Interest \$

Rentals \$

Other \$

TOTAL ANNUAL INCOME \$ 3200

ANNUAL CHARGES AGAINST INCOME

Payments on mortgages and contracts \$

Real estate taxes for year \$

Annual insurance premiums \$

Annual requirements for income tax \$ 184

Payments on other loans for year \$ 11

Other \$

Total annual charges against income \$ 195

Bal of income available for living expenses \$ 3005

TOTAL \$ 3200

Is any change in income anticipated? Give details _____

This Section to Be Used by Bank Only

DISPOSITION

Date 10/10/58

☐ Loan approved for \$ _____

☐ Loan Declined

Remarks: 7/10/58

By _____

together with all the rights, privileges, interests, easements hereditaments and appurtenances thereto belonging or in any wise pertaining thereto, all fixtures and appliances therein or subsequently placed therein or thereon, and all the rents, issues, income, and profits of said mortgaged premises.

This mortgage is given to secure the performance of the provisions hereof and the payment of a certain obligation evidenced by a promissory note of even date herewith for the principal sum

of (\$ 5,000.00) FIVE THOUSAND AND NO/100 - - - - - Dollars, executed by the Mortgagors and payable to the order of the Mortgagee on or before

THIRTEEN (13) years after date, with interest thereon as provided in said note, said principal and interest being payable at the office of the Mortgagee in the City of Flint, Michigan,

in regular monthly installments of (\$ 50.00) Fifty and No/100 - - - - -

Dollars, or more, each, payable on or before the First day of each calendar month hereafter, all of which indebtedness the Mortgagors severally promise and agree to pay to the order of the Mortgagee.

ADDITIONAL ADVANCES. This mortgage shall be continuing security for the payment of the indebtedness due and owing under said note, or any renewal thereof, and for all further and additional sums, absolute or contingent, present or future, as the said Mortgagee may advance to the Mortgagors on the security of this mortgage or which may become due and owing to the Mortgagee from the Mortgagors herein during the continuance of, and until the discharge of, this mortgage.

Sixth. That in the event the mortgaged premises, or any part thereof, are taken under the power of eminent domain, the entire award shall be paid to the Mortgagee and applied first upon the principal last maturing hereunder, and the Mortgagee is hereby empowered in the name of the Mortgagors, or the Mortgagors' assigns, to receive and give acquittance for any such award or judgment, whether it be joint or several.

Seventh. Upon default in any payment provided for by any evidence of indebtedness secured hereby, or in the event of a default by the Mortgagors in the performance of any one or more of the covenants and agreements herein contained, or upon the institution of any legal proceedings to enforce a mortgage or other lien upon the mortgaged property, or if a petition in bankruptcy shall be filed by or against the Mortgagors, or, if the Mortgagors shall, in any way be adjudged insolvent or shall make an assignment for the benefit of creditors, or, if there shall exist any lien or incumbrance on the mortgaged real estate superior to the lien of this mortgage or if said mortgaged property shall be levied upon by virtue of any execution, attachment or other writ, or shall come into the possession of or be ordered sold by the officers of any court, or if the Mortgagors shall abandon the mortgaged property, then the entire indebtedness secured hereby shall, at the option of the Mortgagee, become and be immediately due and payable, without notice or demand, and this mortgage may be foreclosed.

Eighth. The said Mortgagors hereby give and grant to the Mortgagee the right of possession of said premises, and the right, power and privilege to rent and lease the same, and to demand, collect all rents, profits and arrearages of rent or installments of principal or interest under a contract of sale of said property, if any, which may be due or owing to the Mortgagors.

RE 877-40 50

STATE OF MICHIGAN,
COUNTY OF GENESEE

On this Ninth day of April in the year
of our Lord one thousand nine hundred forty nine, before me, the subscriber, a notary
public in and for said county, personally appeared the above named
Gerald W. Barton and Jean W. Barton, his wife

to me known to be the same person as described in and who executed the foregoing instrument,
and who acknowledged that they executed the same as their free act and deed.

Gordon H. Mason
Notary Public, Genesee County, Michigan
Gordon H. Mason

My commission expires February 3, 1952

OK
10.9.4.

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PLAINTIFF'S EXHIBIT NO. 103

TABLE NO. 38 - Assets and liabilities of active national banks, Dec. 31, 1952

ASSETS

(In thousands of dollars)

Location	Number of banks	Loans and discounts, including overdrafts	U.S. Government securities, direct and guaranteed	Obligations of States and political subdivisions	Other bonds, notes, and debentures	Corporate stocks, including stocks of Federal Reserve banks	Currency and coin
Michigan	77	1,012,779	1,573,346	205,844	45,946	4,305	63,177
	Balances with other banks, including reserve balances and cash items in process of collection	Bank premises owned, furniture and fixtures	Real estate owned other than bank premises	Investments and other assets indirectly representing bank premises or other real estate	Customers' liability on acceptances outstanding	Other assets	Total assets
	791,488	18,580	86	1,400	236	11,153	3,728,340

(Abstracted from 90th Annual Report Comptroller of the Currency-1952)
Michigan National Bank v. Michigan Dept. of Revenue - Court of Claims No. 473

Statement of Assets and Liabilities of All Active National Banks in Michigan as of 12/31/52 Exhibit 103 1250a

PLAINTIFF'S EXHIBIT NO.

TABLE NO. 38 - Assets and liabilities of active national banks, Dec. 31, 1952-Continued

LIABILITIES

(In thousands of dollars)

Location	Demand deposits	Time deposits	Total deposits	Bills payable, re-discounts, and other liabilities for borrowed money	Acceptances executed by or for account of reporting banks and outstanding	Other liabilities	Capital stock ¹	Surplus	Undivided profits	Reserves and retained earnings
Michigan	2,467,498	1,048,243	3,515,741	- - -	236	38,863	48,040	86,461	32,223	6,776

¹ See classification on pp.156 and 157.

(Abstracted from 90th Annual Report, Comptroller of the Currency-1952)
Michigan National Bank v. Michigan Dept. of Revenue - Court of Claims No. 473

Statement of Assets and Liabilities of All Active
National Banks in Michigan as of 12/31/52
Exhibit 103
1251a

PLAINTIFF'S EXHIBIT NO.

TABLE NO. 38 - Assets and liabilities of active national banks, Dec. 31, 1952 - Continued
(In thousands of dollars)

Location	Loans and discounts						Real estate loans		
	Commercial and industrial loans (including open market paper)	Loans to farmers directly guaranteed by the Commodity Credit Corporation	Other loans to farmers	Loans to brokers and dealers in securities	Other loans for the purpose of purchasing or carrying stocks, bonds, and other securities		Secured by farm land (including improvements)	Secured by residential properties (other than farm)	Secured by other properties
Michigan	360,993	600	9,963	5,057	6,446	7,098	301,462	60,799	
Loans and discounts Continued									
	Other loans to individuals	Loans to banks	All other loans (including overdrafts)	Total gross loans	Less valuation reserves	Net loans			
	253,651	- - -	20,687	1,026,756	13,977	1,012,779			

(Abstracted from 90th Annual Report Comptroller of the Currency-1952)
Michigan National Bank v. Michigan Dept. of Revenue - Court of Claims No. 473

Statement of Assets and Liabilities of All Active
National Banks in Michigan as of 12/31/52
Exhibit 103
1252a

MICRO CARD
TRADE MARK **®**

22

596



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PLAINTIFF'S EXHIBIT NO.

TABLE NO. 38 - Assets and liabilities of active national banks, Dec. 31, 1952-Continued
(In thousands of dollars)

Location	Capital		Demand deposits					
	Preferred stock	Common stock	Individuals, partnerships, and corporations	U.S. Government	States and political subdivisions	Banks in United States	Banks in foreign countries	Certificates and cash, checks, etc.
Michigan	1,000	47,040	1,885,609	209,370	146,692	194,416	4,504	26,900
	Time deposits							
			Individuals, partnerships, and corporations	U.S. Government	Postal savings	States and political subdivisions	Banks in United States	Banks in foreign countries
			1,034,301	3,083	40	10,489	330	- - -

Statement of Assets and Liabilities of All Active National Banks in Michigan as of 12/31/52 Exhibit 103 12/31/52

- 1 Includes dividend checks, letters of credit and travelers' checks sold for cash, and amounts due to Federal Reserve banks (transit account).

(Abstracted from 90th Annual Report Comptroller of the Currency-1952)
Michigan National Bank v. Michigan Dept. of Revenue - Court of Claims No. 473

Ex. 104
10/20/58
er

MICHIGAN NATIONAL BANKF. H. A. TITLE I LOANS

<u>Year</u>	<u>Average Outstanding</u>	<u>Average Yield</u>	<u>Estimated Annual Income</u>
1947	3,710,043	7.18%	266,407
1948	4,568,145	7.18	327,993
1949	5,495,308	7.18	394,563
1950	6,862,472	7.18	492,725
1951	7,613,931	7.18	546,680
1952	7,719,698	7.18	554,273

77

Ref 106
10/22/58
er

INDUSTRIAL SAVINGS AND LOAN ASSOCIATION
Now known as **PEOPLES SAVINGS AND LOAN ASSOCIATION**
Battle Creek, Michigan

Conventional Real Estate Mortgage Loans Made During 1952

Maturity Analysis

Number of Years To Maturity	Number Of Loans Made	Percentage To Total Number of Loans Made	Amount of Loans Made	Percentage to Total Amount of Loans Made	Total Aggregate Number of Years To Maturity	Aggregate Average Number of Years to Maturity By Number of Loans
4 to 5	1	.33	13,000	.81	4.5	
5 to 6	3	.98	21,100	1.32	16.5	
6 to 7	2	.66	19,000	1.19	13	
8 to 9	3	.98	14,500	.91	25.5	
9 to 10	1	.33	2,150	.13	9.5	
10 to 11	184	60.32	988,475	61.91	1,932	
11 to 12	90	29.51	346,175	21.68	1,035	
13 to 14	1	.33	6,600	.41	13.5	
14 to 15	16	5.24	136,100	8.53	232	
16 to 17	1	.33	22,500	1.41	16.5	
18 to 19	1	.33	2,700	.17	18.5	
21 to 22	1	.33	15,200	.95	21.5	
23 to 24	1	.33	9,300	.58	23.5	
Total	305	100%	1,596,800	100%	1,261.5	11.0

APPRAISAL ANALYSIS

Percentage of Loan Appraisal Plus	Number of Loans Made	Percentage To Total Number of Loans Made	Amount of Loans Made	Percentage To Total Amt of Loans Made	Total of the Appraisal Percentage	Average Aggregate Appraisal Percentage By Number of Loans
70 or less	176	57.70	641,525	52.70	8,101	46%
over 60%	129	42.30	755,275	47.30	8,420	65%
Total	305	100%	1,596,800	100%	16,521	54%

MORTGAGE

772 409

MORTGAGE made this 24th day of December, 1952, between Charles E. Hoskins and
Mary E. Hoskins, his wife, of the City of
County of Genesee, State of Michigan, hereinafter referred to as the Mortgagor,
MICHIGAN NATIONAL BANK, a National Banking Association
incorporated and existing under the laws of United States of America, hereinafter
referred to as the Mortgagee.

WITNESSETH: That the Mortgagor for and in consideration of the sum of Ninety two hundred and no/100 - - -
Dollars (\$92,000.00), the receipt whereof is hereby acknowledged, and
purpose of securing the repayment of said sum, with interest as hereinafter provided, and the performance of the covenants
herein contained, hereby mortgages and warrants unto the Mortgagee, its successors and assigns, the lands, premises, and
situated in the Township of Barton, County of Genesee
State of Michigan, described as follows, to wit:

Lots 564 and 565 of Lapeer Heights, according to the recorded
plat thereof.

That he will promptly pay the principal of and interest on the indebtedness evidenced by the said note, at the times and in the amounts provided. Privilege is reserved to pay the debt in whole, or in an amount equal to one or more monthly payments of the principal that are next due on the note, on the first day of any month prior to maturity; provided, however, notice of an intention to exercise such privilege is given at least thirty (30) days prior to prepayment; and, provided that in the event the debt is paid in full prior to maturity and at that time it is insured under the provisions of the National Housing Act he will pay to the Mortgagee an adjusted premium charge of one per centum (1%) of the original principal of the note, except that in no event shall the adjusted premium exceed the aggregate amount of premium charges which would have been payable if the mortgage had continued to be insured until maturity; such payment to be applied by the Mortgagee to the Federal Housing Commissioner on account of mortgage insurance.

That, in order more fully to protect the security of this mortgage, the Mortgagor, together with, and in addition to, the payments of principal and interest payable under the terms of the note secured hereby, will pay to the Mortgagee the sum:

that this mortgage and the note secured hereby are insured under the provisions of the National Housing Act and so long as they continue to be so insured, one-twelfth (1/12) of the annual mortgage insurance premium for the purpose of putting the Mortgagee in funds with which to discharge its obligation to the Federal Housing Commissioner for mortgage insurance premiums pursuant to the applicable provisions of the National Housing Act, as amended, and Regulations thereunder. The Mortgagee shall, on the termination of its obligation to pay mortgage insurance premiums, credit to the account of the Mortgagor all payments made under the provisions of this subsection which the Mortgagee has not become obligated to pay to the Federal Housing Commissioner.

sum equal to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other hazard insurance covering the mortgaged property, plus taxes and assessments next due on the mortgaged property (all as estimated by the Mortgagee) less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, taxes, and assessments will become delinquent, such sums to be held by Mortgagee in trust to pay said ground rents, premiums, taxes, and special assessments.

All payments mentioned in the two preceding subsections of this paragraph and all payments to be made under the note secured hereby shall be added together and the aggregate amount thereof shall be paid by the Mortgagor each month in a single payment to be applied by the Mortgagee to the following items in the order set forth:

- (i) premium charges under the contract of insurance with the Federal Housing Commissioner;
- (ii) ground rents, taxes, assessments, fire and other hazard insurance premiums;
- (iii) interest on the note secured hereby; and
- (iv) amortization of the principal of said note.

Any deficiency in the amount of any such aggregate monthly payment shall, unless made good by the Mortgagor prior to the due date of the next such payment, constitute an event of default under this mortgage. The Mortgagee may collect a "late charge" not to exceed two cents (2c) for each dollar (\$1) of each payment more than fifteen (15) days in arrears to cover the extra expenses involved in handling delinquent payments.

That: If the total of the payments made by the Mortgagor under (b) of paragraph Third preceding shall exceed the sum of payments actually made by the Mortgagee for ground rents, taxes, or assessments or insurance premiums, as the case may be, such excess shall be credited by the Mortgagee on subsequent payments to be made by the Mortgagor. If, however, the payments made by the Mortgagor under (b) of paragraph Third preceding shall not be sufficient to pay ground rents, taxes, assessments, and insurance premiums, as the case may be, when the same shall become due and payable, then the Mortgagee shall pay to the Mortgagee any amount necessary to make up the deficiency, on or before the date when payment of such rents, taxes, assessments, or insurance premiums shall be due. If at any time the Mortgagor shall tender to the Mortgagee, in accordance with the provisions of the note secured hereby, full payment of the entire indebtedness represented thereby, the Mortgagee shall, in computing the amount of such indebtedness, credit to the account of the Mortgagor all payments made under the provisions of (a) of paragraph Third hereof which the Mortgagee has not become obligated to pay to the Federal Housing Commissioner, and any balance remaining in the funds accumulated under the provisions of (b) of paragraph Third hereof shall be any default under any of the provisions of this mortgage resulting in foreclosure or public sale of the property secured hereby or if the Mortgagee acquires the property otherwise after default, the Mortgagee shall apply, at the time of commencement of such proceedings or at the time the property is otherwise acquired, the balance then remaining in the funds accumulated under (b) of paragraph Third preceding as a credit against the amount of principal then remaining unpaid on the note and shall properly adjust any payments which shall have been made under (a) of said paragraph.

That: That he will pay at maturity all ground rents, taxes, assessments, and all other charges and encumbrances which now exist or hereafter be or appear to be a lien upon the said premises or any part thereof, and for which provision has not been made herein, and will make payments on account of the taxes and assessments levied or to be levied against the premises in accordance with (b) of paragraph Third hereof; and that in default thereof the Mortgagee may, without demand or notice, sell the premises, taxes, assessments, charges, or encumbrances, and pay such sum of money as the Mortgagee may deem to be necessary and shall be the sole judge of the legality or validity thereof and of the amount necessary to be paid in satisfaction thereof.

972 411

NINTH: That he will pay to the Mortgagee forthwith the amounts of all sums of money which the Mortgagee shall pay or expend pursuant to the provisions, or any of them, hereinafter contained, together with interest, upon each of said amounts until paid from the time of the payment thereof at the rate set forth in the note secured hereby, and such payments shall be a further lien on the premises under this mortgage.

TENTH: That should any default be made in the payment of principal or interest, or in the performance of any other covenant of this mortgage or the note secured hereby or any part thereof, when the same is payable or the time of performance has arrived, as above provided, then all the remainder of the aforesaid sum with all sums due hereunder shall at the option of the Mortgagee without notice become immediately payable thereafter, although the period above limited for the payment thereof may not have expired, anything heretofore or in said note contained to the contrary notwithstanding, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time.

ELEVENTH: That no sale of the premises hereby mortgaged and no forbearances on the part of the Mortgagee and no extension of the time for the payment of the debt hereby secured given by the Mortgagee shall operate to release, discharge, modify, change or affect the original liability of the Mortgagor herein either in whole or in part.

TWELFTH: That upon default being made in the payment of the sums of money herein agreed to be paid or in the performance of any of the covenants or agreements herein contained according to the terms hereof or of the note secured hereby the Mortgagee is hereby authorized and empowered to sell or cause to be sold the property hereby mortgaged, and to convey the same to the purchaser, pursuant to the statute in such case made and provided, and out of the proceeds of such sale to retain the moneys due under the terms of this mortgage, the costs and charges of such sale and also the attorneys' fee provided by statute, rendering the surplus moneys (if any there should be) to the said Mortgagor. In the event of public sale, the mortgaged premises may, at the option of the Mortgagee, be sold in one parcel.

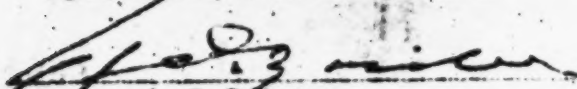
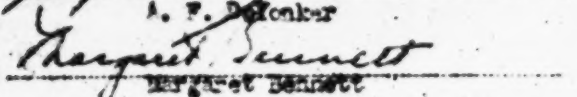
THIRTEENTH: The Mortgagor further agrees that should this mortgage and the note secured hereby not be eligible for insurance under the National Housing Act within _____ from the date hereof (written statement of any officer of the Federal Housing Administration or authorized agent of the Federal Housing Commissioner dated subsequent to the time from the date of this mortgage, declining to insure said note and this mortgage, being deemed conclusive proof of such ineligibility), the Mortgagee or the holder of the note may, at its option, declare all sums secured hereby immediately due and payable.

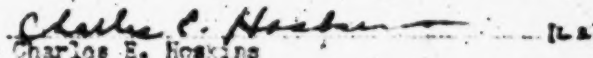
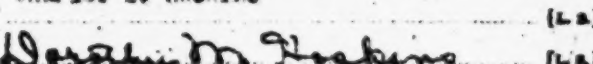
FOURTEENTH: The Mortgagee covenants and agrees that so long as this mortgage and the said note secured hereby are insured under the provisions of the National Housing Act, he will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the mortgaged property on the basis of race, color, or creed. Upon any violation of this undertaking, the Mortgagee may, at its option, declare the unpaid balance of the debt secured hereby immediately due and payable.

The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF the Mortgagor(s) have set their hand(s) and seal(s) the day and year first above written.

Signed, sealed, and delivered in the presence of


A. F. DeFonker

Margaret Bennett

 [L.S.]
Charles E. Hoskins [L.S.]
 [L.S.]
Dorothy M. Hoskins [L.S.]

REAL ESTATE MORTGAGE

MICH 955 PAGE 2

THIS MORTGAGE made this **Twentieth** day of **June** 19 **52**,
between **John S. Wyman and Winifred M. Wyman, his wife**

of **Flint**, **Michigan**, hereinafter
referred to as the Mortgagors, and **MICHIGAN NATIONAL BANK**, a National Banking Association, having an office
in the city hereinafter designated, hereinafter referred to as the Bank.

WITNESSETH, That the Mortgagors, in consideration of the principal amount of
Thirteen Thousand and no/100 ----- **DOLLARS \$ 13,000.00**
paid to them by the Bank, the receipt of which is hereby acknowledged, hereby mortgage and warrant to the Bank, its
successors and assigns, forever, the land and property situated in the Township of **Grand Blanc**
County of **Genesee** and the State of **Michigan**, described as follows:

Beginning at a point where the center line of Saginaw Turnpike, now Dixie Highway, so called, intersects the north line of Section 24, Township 6 North, Range 2 East; thence running in a southeasterly direction along the center line of said highway 100 feet; thence westerly parallel with the north line of said section to the east line of the west 1/3 of the east half of the northwest quarter of said section; thence due north along said line to the north line of said section; thence east along the north line of said section to the place of beginning.

2. The Mortgagors shall pay to the Bank forthwith all amounts which the Bank shall pay pursuant to any of the aforesaid provisions, together with interest upon each of said amounts from the time of the payment thereof by the Bank until repayment by the Mortgagors at the rate of seven per cent per annum, and all such payments by the Bank shall be a further lien on said property.

10. That if damages are awarded for the taking of or injury to said property, or any part thereof, whether under the power of eminent domain or otherwise, all such damages shall be paid to the Bank, and if paid prior to the redemption from foreclosure of this mortgage, shall be applied to the satisfaction of all indebtedness created by this mortgage.

11. If any person or persons shall succeed to the interest of the Mortgagors in said property, or any part thereof, the Bank may from time to time deal with and enter into such agreements with any successor in interest of the Mortgagors as it may desire. The Mortgagors, by reason thereof, shall not be deemed to have been released to any extent whatever from liability for the payment of the debt secured hereby.

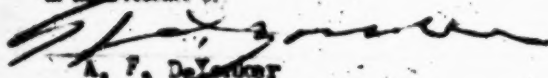
12. If any default be made in the payment of any principal or interest due hereunder or according to said note, or in the payment of any principal or interest of indebtedness resulting from such other sums heretofore or hereafter advanced or according to the note or notes given therefor, or in the performance of any other covenants of this mortgage or the note secured hereby, or any part thereof, by the Mortgagors, their heirs, executors, administrators, successors or assigns, or if they shall allow or permit any legal or equitable lien to stand or be placed against said property which will in any way affect or weaken the security herein given, or shall do any act whereby said property is made less valuable, and if such default shall continue for thirty days, then thereafter at the election of the Bank the whole of said principal and the interest thereon shall be immediately due and payable, and no notice other than the commencement of proceedings to foreclose this mortgage, or collect such moneys, shall be required to be given of such election. In case of any such default, the Bank is hereby authorized to sell and convey said property, with the appurtenances thereto belonging, at public auction, and execute to the purchaser or purchasers, its, his, her, or their heirs, successors or assigns, good and sufficient deed or deeds of conveyance of said property, pursuant to the statute in such case provided; and after deducting said principal and interest, the amounts paid for taxes, assessments, insurance, repairs, encumbrances, abstracts and tax liens, with interest, as heretofore provided, legal costs and an attorney fee as provided by law, pay the surplus moneys, if any, to the Mortgagors, their representatives or assigns.

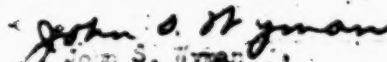
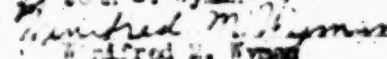
13. The word "Mortgagors" shall be read in the singular or plural and shall be construed in the masculine, feminine or neuter as the case may be.

14. The covenants and agreements contained in this mortgage shall run with the land and shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF the Mortgagors have hereunto set their hands and seal, or if a corporation, has caused its corporate name and seal to be hereunto affixed this day and year first above written at Flint

Signed, Sealed and Delivered
in the presence of


A. F. DeYonker

 (L. S.)
John S. Wyman
 (L. S.)
Winifred M. Wyman

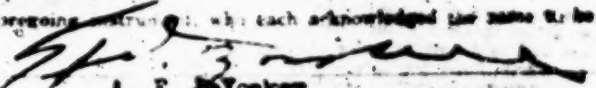
 (L. S.)
A. F. DeYonker

STATE OF MICHIGAN

COUNTY OF Genesee

On this Twentieth day of June 1952, before me, a Notary Public
in and for said County, appeared John S. Wyman and Winifred M. Wyman, his wife

to me known to be the same persons who executed the foregoing instrument, who each acknowledged the same to be his or her free act and deed.


A. F. DeYonker
Notary Public, Genesee County, Michigan
My commission expires May 2, 1955

STATE OF MICHIGAN

COUNTY OF

On this day of 19 before me, a Notary Public
in and for said County, appeared and
to me known, who being by me sworn, did say that they are respectively the

of the corporation named in and which executed the within mortgage, that the seal affixed thereto is the corporate seal of said corporation, and that said mortgage was signed and sealed in behalf of said corporation by authority of its board of directors; and said persons acknowledged said mortgage to be the free act and deed of said corporation.

REAL ESTATE MORTGAGE

REC 963 REG 612

This Mortgage, Made the Nineteenth day of September

in the year of our Lord one thousand nine hundred Fifty Two

WITNESSETH: That Michael L. Ivanoff and Genevieve Ivanoff, his wife

hereinafter referred to as the "Mortgagors" whether singular or plural, MORTGAGE AND WARRANT to FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF FLINT, at Flint, Michigan, a corporation organized under the laws of the United States, hereinafter referred to as the "Mortgagee" the following described real estate situated in the Township of Grand Blanc, Genesee County, Michigan, to wit:

Beginning at a point where the center line of Saginaw Turnpike, now Dixie Highway, so called, intersects the North line of Section 26, Township 6 North, Range 7 East; thence running in a southeasterly direction along the center line of said highway 400 feet; thence westerly parallel with the North line of said section to the East line of the West 1/8 of the East half of the Northwest quarter of said section; thence due North along said line to the North line of said section; thence East along the North line of said section to the place of beginning.

26-6-11

STATE OF MICHIGAN,

County of Genesee

On the Twenty-Fourth day of December, A. D. 19 52

before me, appeared R. E. Parker

to me personally known, who being by me duly sworn, did say that He is the President

of First Federal Savings and Loan Association of Flint

and that the seal affixed to the foregoing instrument is the corporate seal of said Association

and that said instrument was signed and sealed in behalf of said Association by authority of its Board of

Directors and that said R. E. Parker

of said First Federal Savings and Loan Association of Flint

Gordon H. Mason

27745

Gordon H. Mason

Notary Public

Michigan National Bank
Flint, Michigan

DEC 31 1952

Genesee County, Michigan

My commission expires February 17, 1956

IN THE FOREGOING AND IN EXHIBITING SEAL, STATE OUT THE WORDS BETWEEN THE
FIGURES (1) AND (2) IN THE LAST CLAUSE OF THE FOREGOING AND IN THE
ENCLOSURE.

PRINT, TYPEWRITE OR STAMP NAME OF PERSON SIGNING THIS INSTRUMENT,
ALSO NAME OF THE OFFICER AND NOTARY PUBLIC SIGNING THIS INSTRUMENT,
ONCE EACH.

WITNESSETH THAT THE FOREGOING INSTRUMENT WAS

together with the hereditaments and appurtenances thereto belonging, including all gas and electric fixtures, radiators, radiators, sinks or covers, heaters, oil burners, gas burners, engines, and machinery, boilers, furnaces, ranges, elevators and mowers, bath-tubs, sinks, water closets, basins, pipes, showers, faucets and other plumbing and heating fixtures, mirrors, mantels, refrigerating sets and ice boxes, screens, awnings, cooking apparatus and appurtenances, and such other goods and chattels and personal property as are ever furnished by a landlord in letting or operating an unfurnished building, similar to the one herein described, referred to, which are now or shall hereafter be attached to said building or premises by nails, screws, bolts, pipe connections, masonry, or in any other manner, which are and shall be deemed to be fixtures and an accession to the freehold and a part of the realty as between the parties hereto, their heirs, executors, administrators, successors and assigns, and all persons claiming by, through, or under them, and shall be deemed to be a portion of the security for the indebtedness herein mentioned and to be covered by this mortgage.

TO HAVE AND TO HOLD the above mortgaged premises, together with the appurtenances thereto appertaining unto the said Mortgagee forever, provided that if the Mortgagor shall pay the principal and all interest as provided in a certain promissory note executed by said Mortgagor to said Mortgagee of even date herewith and shall pay all other sums hereinafter provided for, and shall well and truly keep and perform all of the covenants herein contained, then this mortgage and the aforesaid note shall be null and void; otherwise to remain in full effect.

And the Mortgagor hereby covenants as follows:

First: For value received and the consideration aforesaid, the Mortgagor hereby agrees to pay to the Mortgagee at the office of the City of Flint, in the County of Genesee, State of Michigan, or at such other place as the holder of the note may designate in writing, the principal sum of Fifty two hundred and no/100 Dollars (\$9,200.00), with interest from date at the rate of four and one quarter per centum (4 1/4%), per annum on the unpaid balance until paid. The said principal and interest shall be payable in monthly installments of Fifty seven and 00/100 Dollars (\$57.00), commencing on the first day of February, 1953, and on the first day of each month thereafter until the principal and interest are fully paid, except that the final payment of principal and interest, if not sooner paid, shall be due and payable on the first day of January, 1973, according to the terms of a promissory note bearing even date herewith executed by the Mortgagor to the Mortgagee.

That he will keep the improvements now existing or hereafter created on the mortgaged property, insured as may be from time to time by the Mortgagee against loss by fire and other hazards, cancellable and assignable in such amounts for such periods as may be required by the Mortgagee and will pay promptly, when due, any premiums on such insurance for payment of which has not been made hereinbefore. All insurance shall be carried in companies approved by the Mortgagee and the policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses in full and in form acceptable to the Mortgagee. In event of loss Mortgagee will give immediate notice by mail to the Mortgagor, who may make proof of loss if not made promptly by Mortgagee, and such insurance company concerned is hereby notified and directed to make payment for such loss directly to the Mortgagee instead of to the Mortgagor and the Mortgagee, and the insurance proceeds, or any part thereof, may be applied by the Mortgagee at its option either to the satisfaction of individuals hereby secured or to the restoration or repair of the property damaged. In case of foreclosure of this mortgage or other transfer of title to the mortgaged property in extinguishment of the individuals secured hereby, all right and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee.

That he will abstain from the commission of waste on said premises and keep the buildings thereon and all equipment therein mortgaged in good repair, and promptly comply with all laws, ordinances, regulations, and requirements of any governmental body affecting the said mortgaged premises, and should said premises or any part thereof require inspection, repair, or attention of any kind or nature not provided by the Mortgagee, the Mortgagee, being hereby made sole judge of the necessity thereof, may, after notice to the Mortgagor, enter or cause entry to be made upon said property, and inspect, repair, protect, or maintain said property as the Mortgagee may deem necessary, and may pay such sum of money as the Mortgagee may deem to be necessary therefor, and shall be the sole judge of the amount necessary to be paid.

That should any default be made in the covenants of this mortgage, the Mortgagee may cause the abstract or books of title and the tax histories of said premises to be certified to date, or may procure any abstract of title and tax sales or title search in case none were furnished to the Mortgagee, and may pay thereby such sums as it may deem to be necessary, and if unpaid, may pay the mortgage tax on this instrument, and shall be the sole judge of the amount necessary to be paid therefor.

10-2204
45

STATE OF MICHIGAN,
COUNTY OF Genesee

On this 24th day of December, A. D. 1952, before me, a Notary Public in and for said County, personally appeared Charles E. Hoskins and Dorothy M. Hoskins, his wife, to me known to be the person described in and who executed the within mortgage and acknowledged the execution thereof to be their free act and deed.

DEC 29 '52

275-51

My Commission expires
May 2, 1955

[Signature]
Notary Public, Genesee County, Michigan.
A. V. DeYonker

Michigan National Bank
Flint, Michigan

RECORDED
Eugene M. Smith
REGISTER OF DEEDS
DEC 29 3 41 PM '52
GENESEE COUNTY
FLINT, MICHIGAN

Together with the easements, hereditaments and appurtenances thereunto, now or hereafter belonging; or in anywise appertaining, and all buildings and other structures now or hereafter situated on said land, all window and door screens, window insulating units, storm windows and doors, awnings, cabinets, shelving, counters, partitions, elevators, in-a-door beds, curtain and shade fixtures, shades, venetian blinds, linoleum and similar coverings, gas and electric fixtures built-in refrigerators, ventilators and incinerators, laundry equipment, pumps, dynamo, generators, furnaces, and generally all heating, lighting, air conditioning, ventilating, refrigerating, cleaning, incinerating, power, plumbing and other fixtures, machinery, appliances, apparatus, equipment and devices, which may now or at any time hereafter be situated thereon and attached thereto, to secure the performance of the covenants hereinafter contained.

This mortgage shall secure the repayment of said principal amount and such other sums as the Bank heretofore may have advanced or may hereafter advance from time to time to the Mortgagors, or either of them, and shall be a continuing security for any and all such sums, principal and interest; and this mortgage is given upon condition that if the Mortgagors shall pay to the Bank, its successors or assigns, said principal amount with interest thereon, according to the terms of a promissory note of this date executed by the Mortgagors, and any other indebtedness resulting from the advancement of such other sums heretofore or hereafter by the Bank to the Mortgagors with interest thereon, according to the promissory note or notes given therefor from time to time, but not in excess of the original principal amount of the mortgage, then this mortgage and said note or notes shall cease. The rate of interest on all indebtedness secured hereby shall be seven per cent per annum from the date of default in the terms of such indebtedness until redemption from sale under foreclosure of the mortgaged property, notwithstanding any provisions to the contrary in the evidence of such indebtedness.

The Mortgagors covenant with the Bank that:

1. The Mortgagors shall pay said principal amount and interest thereon, according to the terms of said note.
2. The Mortgagors hold a free, clear and unencumbered fee simple title to said mortgaged property, and they will forever warrant and defend the same.
3. The Mortgagors in addition to, and at the times of the monthly payments of principal and interest, shall pay to the Bank such additional amounts as shall be estimated from time to time by the Bank as necessary for the establishment of a reserve fund from which, insofar as it may be sufficient, the Bank shall pay when due all taxes, assessments and insurance premiums on said property. If the Bank has not by reason of said payments, a sufficient sum to pay such taxes, assessments and insurance premiums, the Mortgagors shall forthwith on demand pay to the Bank a sum, which with the sums already paid to the Bank as aforesaid, will be sufficient to pay in full all such taxes, assessments and insurance premiums. The Bank shall apply, at the time of the commencement of foreclosure proceedings or at the time the property is otherwise acquired after default, the balance then remaining in such reserve fund as a credit first against the interest and then the principal remaining unpaid under said note. If the payments made by the Mortgagors into such fund shall exceed the amount of the payments by the Bank for taxes, assessments and insurance premiums, the Bank may return said excess to the Mortgagors or apply the same to any payment then due or to become due on said note.
4. The Mortgagors shall pay when due all ground rents, taxes, assessments, and other charges and encumbrances which now are, or shall hereafter be or appear to be, a lien upon all or any part of said property and for which provision has not been made hereinbefore, and in default thereof, or in default in the payment to the Bank of the amounts required in paragraph 3 hereof, the Bank may, without demand or notice, pay the said rents, taxes, assessments, charges or encumbrances, in such amounts as the Bank in its sole judgment may deem to be necessary therefor.
5. The Mortgagors shall insure the improvements now existing or hereafter erected on said property against loss by fire and other hazards and casualties in such companies, in such amounts, and for such periods as shall be approved by the Bank, and shall pay when due all premiums on such insurance for which provision has not been made hereinbefore. All insurance policies and renewals thereof shall be held by the Bank and have attached thereto loss payable clauses in favor of and in forms approved by the Bank. In the event of loss the Mortgagors shall give immediate notice by mail to the Bank, which may make proof of loss if not made promptly by the Mortgagors. Any insurance company so authorized and directed to make payment for such loss directly to the Bank, and the insurance proceeds or any part thereof may be applied by the Bank either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event of foreclosure of this mortgage or other transfer of title to the mortgaged property in satisfaction of the indebtedness secured hereby, all right, title and interest of the Mortgagors in and to any insurance policies then in force shall pass to the purchaser or grantee. If the Mortgagors shall fail to procure such insurance, the Bank may procure the same and pay the premiums thereon.
6. The failure of the Mortgagors to pay or to provide for the payment of any taxes assessed against said property or any insurance premium upon a policy covering any of said property shall constitute waste and shall entitle the Bank where provided by law to the appointment by a court of competent jurisdiction of a receiver of the property for the purpose of preventing such waste, which receiver, subject to the order of the court, may collect the rents and income from said property and exercise such control over said property as to such court may seem proper.
7. The Mortgagors shall abstain from the commission of waste on said property and shall keep the buildings and all mortgaged equipment thereon in good repair and shall comply promptly with all laws, ordinances, regulations and requirements of any governmental body affecting said property or the use thereof. If said property or any part thereof shall require inspection, repair or care of any kind which the Mortgagors shall fail to provide, the Bank may, after notice to the Mortgagors, enter, inspect, repair and cure for said property and pay such amounts therefor, as in its sole judgment it may deem necessary.
8. If any default be made in the covenants of this mortgage, the Bank may cause any abstracts of title and tax histories in its possession for said property to be certified to date, or may procure new abstracts of title and tax histories if none were furnished to the Bank, and may pay therefor such amounts as in its sole judgment it may deem necessary.

**REAL ESTATE
MORTGAGE**

Pgt's
E+ 102 = A = 11
7/2/58
Btu

TO THE
MICHIGAN NATIONAL BANK

REGISTER'S OFFICE

RECORDED
Book No. 102
LOCAL RECORDS OF DEEDS

day *Jan 24* 9 59 AM '52

at **OSHTON COUNTY**
FLINT, MICHIGAN and recorded
in *102* of Mortgage, on

775
Michigan National Bank
Flint, Michigan

Recorder of Deeds in and for said County

Notary Public,
My commission expires

County, Michigan

together with all the rights, privileges, interests, easements, hereditaments and appurtenances thereto belonging or in any way pertaining thereto, all fixtures and appliances thereto or subsequently placed thereto or thereon, and all the rents, issues, income, and profits of said mortgaged premises.

This mortgage is given to secure the performance of the provisions hereof and the payment of a certain obligation evidenced by a promissory note of even date herewith for the principal sum of (\$ 15,000.00) FIFTEEN THOUSAND AND NO/100 - - - - - Dollars, executed by the Mortgagors and payable to the order of the Mortgagee on or before

Twelve (12) years after date, with interest thereon as provided in said note, said principal and interest being payable at the office of the Mortgagee in the City of Flint, Michigan, in regular monthly installments of (\$ 150.00) One Hundred Fifty and No/100 - - - - -

Dollars, or more, each, payable on or before the First day of each calendar month hereafter, all of which indebtedness the Mortgagee severally promises and agrees to pay to the order of the Mortgagee.

ADDITIONAL ADVANCE. This mortgage shall be continuing security for the payment of the indebtedness due and owing under said note, or any renewal thereof and for all further and additional sums, checks or drafts, present or future, as the said Mortgagee may advance to the Mortgagee on the security of this mortgage or which may become due and owing to the Mortgagee from the Mortgagors herein during the continuance of, and until the discharge of, this mortgage.

001 013

And the Mortgagors do hereby further covenant and agree with the Mortgagee as follows:

First. That the Mortgagors will pay to the Mortgagee said principal sum with interest thereon as herein provided, and any other sum, with interest thereon, paid by the Mortgagee under the covenants and conditions of this mortgage.

Second. That the Mortgagors will, until the debt hereby secured is fully satisfied, pay all taxes and assessments levied on said premises, and pay all premiums for keeping all insurable property covered hereby insured against loss and damage by fire and windstorm, with such insurers and in such amounts and manner as shall be, in the judgment of the Mortgagee, necessary or proper. The said taxes and assessments will be paid by the Mortgagors as follows:

commencing on November 1, 1938 next, and monthly thereafter, until the debt hereby secured is fully satisfied, except as hereinafter provided, the Mortgagors will deposit with

the Mortgagee not less than the sum of (\$) annual taxes per month Dollars to be used in the payment of said taxes and assessments, when due, and in the event that sufficient funds for that purpose have not been deposited by the Mortgagors with the Mortgagee, when any such taxes or assessments become due and payable, the Mortgagors will forthwith pay the balance thereof to the Mortgagee. In the event said monthly payment shall, at the expiration of three (3) years from the date hereof, be found to have been insufficient or more than the necessary amount to satisfy the taxes and assessments which accrued during said period, the Mortgagee shall apply any surplus then accumulated upon the principal, and shall increase or reduce the monthly payment for taxes and assessments to such amount as will, in the judgment of the Mortgagee, be sufficient to satisfy the taxes and assessments to accrue during the following three year (3) period, and a similar application and adjustment shall be made every three years (3) thereafter, until the debt hereby secured is fully satisfied.

Third. That the Mortgagors will abstain from the commission of waste on said premises and will keep the buildings which are or shall be located thereon in good repair.

Fourth. That the Mortgagors will now and at all times, during the life of this mortgage, at the cost and expense of the Mortgagors, promptly comply with all laws, ordinances, regulations or requirements of any lawfully constituted authority affecting said mortgaged premises, and will now and at all times do and perform all things necessary or required by law to perfect and maintain this mortgage as a legally enforceable security for the payment of all sums secured or intended to be secured hereby.

Fifth. That if default be made in the payment by the Mortgagors of any of the aforesaid taxes, or assessments, as above covenanted and agreed, or in keeping any other agreement herein contained, the Mortgagee may pay said taxes and special assessments, may make all necessary repairs, and may cause to be extended and certified the abstract or abstracts and tax histories of the mortgaged premises, or may procure new abstracts and tax histories in case none were furnished to the Mortgagee, and the moneys paid for, any one or all of said purpose shall from time of their payment be due and payable with interest thereon at the rate of six per cent per annum, payable monthly until paid, and shall constitute a further lien upon said premises under this mortgage. In case of foreclosure of this mortgage, the abstracts of title shall be absolute property of the Mortgagee.

Sixth. That in the event the mortgaged premises, or any part thereof, are taken under the power of eminent domain, the entire award shall be paid to the Mortgagee and applied first upon the principal last maturing hereunder, and the Mortgagee is hereby empowered in the name of the Mortgagors or the Mortgagors' assigns, to receive and give acquittance for any such award or judgment, whether it be joint or several.

evidence of indebtedness secured hereby. The Mortgagee, shall apply all sums collected under the power hereby granted, first, to the payment of interest upon any and all sums secured hereby, and the remainder shall be applied upon the unpaid balance of the indebtedness hereby secured, rendering the surplus, if any there should be, to said Mortgagors.

Ninth. Should default be made in the payment of any of the sums of money above mentioned, or in the performance of any of the covenant or agreements herein contained, then and in such case it shall be lawful for said Mortgagee, and said Mortgagors do hereby empower and authorize said Mortgagee, to grant, bargain, sell, release and convey the said lands and premises, with the appurtenances at public auction, and on such sale to make and execute to the purchaser or purchasers, his, her or their heirs and assigns, forever, sufficient deeds of conveyance in law, pursuant to the statute in such case made and provided, and out of the proceeds of such sale to retain all sums then due hereunder and secured hereby, including any attorney fee provided for by law, rendering the surplus, if any there should be to said Mortgagors.

Tenth. The Mortgagee may, at its option, extend the time for payment of said indebtedness, or reduce the payments thereon, or accept a renewal note or notes therefor, without the consent of any junior lien holder, and without the consent of the Mortgagors, if the Mortgagors have parted with the title to said property, and any such extension, reduction or renewal shall not release the Mortgagors, or any endorser or guarantor, from liability for such indebtedness, or affect the priority of this mortgage over any junior lien, or impair the security hereof in any manner whatsoever, and no failure on the part of the Mortgagee to exercise any of its rights hereunder for defaults or breaches of covenants shall be construed so prejudice its rights in the event of any other subsequent default or breach of covenant, and no delay on the part of the Mortgagee in exercising any of such rights shall be construed to preclude it from the exercise thereof at any time during the continuance of any such default, and the Mortgagee may enforce any one or more remedies hereunder successively or concurrently at its option.

Eleventh. All rights and obligations hereunder shall extend to and be binding upon the several heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the said mortgagors have hereunto set their hands and seals the day year first above written.

Signed, sealed and delivered in presence of:

Michael E. Evanoff (L.S.)
MICHAEL E. EVANOFF

Shirley Scott
Shirley Scott

(L.S.)

Jean Lynch
Jean Lynch

Jeanne Evanoff (L.S.)
JEANNE EVANOFF

(L.S.)

Page 107
10/22/58
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MARSHALL SAVINGS AND LOAN ASSOCIATIONMarshall, MichiganConventional Real Estate Mortgage Loans Made During 1952MATURITY ANALYSIS

<u>Number Of Years To Maturity</u>	<u>Number of Loans Made</u>	<u>Percentage To Total Number of Loans Made</u>	<u>Amount Of Loans Made</u>	<u>Percentage To Total Amount of Loans Made</u>	<u>Total Aggregate Number of Years to Maturity</u>	<u>Aggregate Average Number of Years to Maturity By Number of Loans</u>
7 to 8	1	1.89	800	.35	7.5	
10 to 11	6	11.32	31,700	13.67	63	
11 to 12	46	86.79	199,375	85.98	529	
Total	53	100 %	231,875	100 %	599.5	11.3

APPRAISAL ANALYSIS

<u>Percentage of Loans to Appraisal Plus</u>	<u>Number of Loans Made</u>	<u>Percentage To Total Number of Loans Made</u>	<u>Amount of Loans Made</u>	<u>Percentage To Total Amt of Loans Made</u>	<u>Total of Appraisal Percentage</u>	<u>Average Aggregate Appraisal Percentage By Number of Loans</u>
90% or less	28	52.83	112,275	48.42	1,263	45%
Over 60%	25	47.17	119,600	51.58	1,667	67%
Total	53	100 %	231,875	100 %	2,930	55%

Ref Ex 108
10/22/58

SAGINAW SAVINGS AND LOAN ASSOCIATIONSaginaw, MichiganConventional Real Estate Mortgage Loans made During 1952MATURITY ANALYSIS

Number of Years to Maturity	Number Of Loans Made	Percentage To Total Number of Loans Made	Amount of Loans Made	Percent. To Total Amount of Loans Made	Total Aggregate Number Of Years To Maturity	Aggregate Average Number of Years to Maturity By Number Of Loans
1 to 2	3	.61	1,850	.06	4.5	
2 to 3	1	.20	300	.02	2.5	
3 to 4	11	2.23	13,450	.46	38.5	
4 to 5	7	1.42	13,050	.43	31.5	
5 to 6	14	2.83	33,705	1.16	77	
6 to 7	13	2.63	37,250	1.28	84.5	
7 to 8	18	3.44	47,870	1.65	127.5	
8 to 9	29	5.87	113,000	3.89	246.5	
9 to 10	20	4.03	93,440	3.22	190	
10 to 11	174	33.23	921,355	31.73	1,827	
11 to 12	37	7.49	171,805	5.91	425.5	
12 to 13	8	1.62	69,400	2.39	100	
13 to 14	17	3.44	160,050	5.51	229.5	
14 to 15	115	23.28	951,030	32.74	1,667.5	
15 to 16	18	3.64	168,600	5.80	279	
16 to 17	6	1.21	61,975	2.13	99	
17 to 18	2	.41	18,200	.63	35	
18 to 19	1	.20	13,900	.48	18.5	
22 to 23	1	.20	14,250	.49	22.5	
Total	494	100 %	2,904,900	100 %	5,306	11.1

APPRAISAL ANALYSIS

Percentage of Loans to Appraisal Value	No. Of Loans Made	Percentage To Total Number of Loans Made	Amount of Loans Made	Percentage of Total Amt of Loans Made	Total of Appraisal Percentage	Average Aggregate Appraisal Percentage By Number of Loans
60% or less	196	39.68	900,475	31.00	9,325	48%
Over 60%	298	60.32	2,004,425	69.00	20,032	67
Total	494	100 %	2,904,900	100 %	29,357	39%

Exhibit 200

CONVENTIONAL LOANS MADE BY ASSOCIATIONS IN 1952 WITH TERM
OF 10 YEARS OR LESS AND WHERE AMOUNT LOANED WAS 60% OR
LESS OF APPRAISED VALUE OF SECURITY

	(A)	(B)	(C)	(D)
	Total Conventional Loans Made by Associations	Amount of Loans in Column (A) with Term of 10 Years or Less or Where Amount Loaned was 60% or Less of Appraised Value of Security	Percentage of Column (B) Loans to Column (A) by Category	Percentage of Each Category in Column (B) to Total of Column (A)
Construction	\$ 9,442,491.47	\$ 497,877.93	5.27%	1.9107%
Purchases	8,339,047.18	326,375.28	3.91%	1.252%
Refinance	4,350,726.27	203,596.00	4.68%	.7813%
Improvements	944,486.11	126,780.26	13.42%	.486%
Others	<u>2,989,782.78</u>	<u>519,114.56</u>	17.41%	<u>1.9922%</u>
TOTALS	<u>\$26,057,533.81</u>	<u>\$1,673,744.03</u>		<u>6.4232%</u>

Exhibit 200

1952

**SUMMARY OF CONVENTIONAL LOANS MADE BY ASSOCIATION IN 1952
WITH AMOUNT OF LOAN BASED ON APPRAISAL OF 60% OR LESS
AND TERMS OF 10 YEARS OR LESS**

	<u>Amount</u>	<u>Percent to Total</u>
Construction	\$ 497,877.93	29.746%
Purchase	326,375.28	19.500%
Refinance	203,596.00	12.164%
Improvements	126,780.26	7.575%
Others	<u>519,114.56</u>	<u>31.015%</u>
TOTAL	<u>\$1,673,744.03</u>	<u>100.000%</u>

<u>West Side Federal (Grand Rapids)</u>	<u>Grand Rapids Mutual Federal</u>	<u>East Lansing</u>	<u>Saginaw</u>	<u>Peoples (Battle Creek)</u>	<u>First (Saginaw)</u>	<u>Lansing</u>	<u>Totals</u>
None	\$ 35,999.50	None	\$ 36,074.00*	None	\$ 50,950.48*	None	\$ 497,877.93
\$ 1,200.00	59,669.00	\$19,700.00	50,716.78*	None	33,117.48*	None	326,375.28
25,250.00	60,579.17	6,000.00	6,122.92*	None	None *	None	203,996.00
None	25,092.53	2,000.00	1,873.21*	None	5,161.25*	None	126,780.26
<u>15,400.00</u>	<u>112,909.80</u>	<u>2,500.00</u>	<u>8,958.09*</u>	<u>None</u>	<u>22,220.79*</u>	<u>\$2,000.00</u>	<u>519,114.56</u>
<u>\$41,850.00</u>	<u>\$294,250.00</u>	<u>\$20,200.00</u>	<u>\$102,745.00</u>	<u>None</u>	<u>\$111,450.00</u>	<u>\$2,000.00</u>	<u>\$1,673,744.03</u>

* Breakdown of loans in both category as to percentage of appraised value and term of loan, not available.
Allocation of total loans computed, based on ratio of association total conventional loans made - Exh. 200B.

Seventh. Upon default in any payment provided for by any evidence of indebtedness secured hereby, or in the event of a default by the Mortgagors in the performance of any one or more of the covenants and agreements herein contained, or upon the institution of any legal proceedings to enforce a mortgage or other lien upon the mortgaged property, or if a petition in bankruptcy shall be filed by or against the Mortgagors, or, if the Mortgagors shall, in any way be adjudged insolvent or shall make an assignment for the benefit of creditors, or, if there shall exist any lien or incumbrance on the mortgaged real estate superior to the lien of this mortgage or if said mortgaged property shall be levied upon by virtue of any execution, attachment or other writ, or shall come into the possession of or be ordered sold by the officers of any court, or if the Mortgagors shall abandon the mortgaged property, then the entire indebtedness secured hereby shall, at the option of the Mortgagee, become and be immediately due and payable, without notice or demand, and this mortgage may be foreclosed.

Eighth. The said Mortgagors hereby give and grant to the Mortgagee the right of possession of said premises, and the right, power and privilege to rent and lease the same, and to demand, collect all rents, profits and arrearages of rent or installments of principal or interest under a contract of sale of said property, if any, which may be due or owing to the Mortgagors, provided, that said right, power and privilege hereby granted may be enforced and exercised by the Mortgagee, at its option, in case of failure of the Mortgagors to perform any of the agreements or conditions of this mortgage, or any

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STATE OF MICHIGAN,
COUNTY OF GENESEE

On this nineteenth day of September in the year
of our Lord one thousand nine hundred Fifty Two before me, the subscriber, a notary
public in and for said county, personally appeared the above named

Michael S. Ivanoff and Genevieve Ivanoff, his wife

to me known to be the same person as described in and who executed the foregoing instrument, and
who acknowledged that they executed the same as, their free act and deed.

Larlene J. Smith
Notary Public, Genesee County, Michigan
Larlene J. Smith

RECORDED

Carl M. Smith
REGISTER OF DEEDS

commission expires November 22, 1953

SEP 23 10 22 AM '52

GENESEE COUNTY
FLINT, MICHIGAN

FIRST FEDERAL SAVINGS & LOAN ASS.
126 WEST HENRIEY STREET
FLINT, MICHIGAN

52-

Exhibit 2002

ALLOCATION OF CONVENTIONAL LOANS ON SECURITY WITH APPRAISED
VALUE OF 60% OR LESS OF LOAN AND TERM OF 10 YEARS OR LESS
TO UNEW, SAGINAW, AND FIRST SAVINGS & LOAN ASSOCIATION
LOAN CLASSIFICATIONS

	Total Conventional Loans by Association	Ratio of Loans by Class to Total Con- ventional Loans	Total Conventional Loans on Basis of Computed Ratio
<u>UNEW SAVINGS & LOAN (Lansing)</u>	(A)	(B)	(C)
Construction	\$ 688,408.00	43.0400%	\$ 16,838.95
Purchase	719,325.00	45.3031%	17,791.71
Refinance	69,900.00	4.4217%	1,728.88
Improvements	44,000.00	2.7833%	1,088.27
Others	<u>67,280.00</u>	<u>4.2399%</u>	<u>1,662.19</u>
Totals	\$1,588,925.00	100.0000%	\$ 39,100.00
<u>SAGINAW SAVINGS & LOAN</u>			
Construction	\$ 942,630.00	34.7718%	\$ 36,874.80
Purchase	1,325,280.00	48.8860%	50,716.78
Refinance	160,000.00	5.9019%	6,122.92
Improvements	48,931.46	1.8036%	1,873.21
Others	<u>239,078.63</u>	<u>8.6367%</u>	<u>8,928.09</u>
Totals	\$2,715,960.09	100.0000%	\$103,745.00
<u>FIRST SAVINGS & LOAN (Saginaw)</u>			
Construction	\$1,775,069.05	45.7160%	\$ 50,930.48
Purchase	1,153,704.73	29.7151%	33,117.48
Refinance	None	None	None
Improvements	179,815.48	4.6110%	5,161.25
Others	<u>779,148.46</u>	<u>19.9579%</u>	<u>22,228.79</u>
Totals	\$3,982,817.72	100.0000%	\$111,430.00

Exhibit 2002

12031

Exhibit 200C

SUMMARY AND BREAKDOWN OF CONVENTIONAL LOANS MADE BY SAVINGS & LOAN ASSOCIATIONS IN 1952, AND TOTALS OF FHA, GI, AND OTHERS MADE IN 1952

Purpose of Loan	Detroit & Northern (Flint Office Only)	Union (Lansing)	First Federal (Flint)	Marshall	Calhoun Federal (Battle Creek)	Homestead (Albion)	Mutual Home Federal (Grand Rapids)	Citizens Federal (Port Huron)	\$
Construction	\$ 780,547.56	\$ 680,400.00	\$ 775,047.14	\$ 50,604.03	\$ 261,800.00	\$ 43,556.83	\$ 778,885.51	\$ 903,788.08	\$
Purchase	360,237.16	719,325.00	96,950.00	98,400.00	268,650.00	115,227.90	793,937.48	382,814.37	
Refinance	252,400.20	69,900.00	73,215.03	7,300.00	1,807,150.00	62,500.00	621,407.37	146,527.44	
Improvements	51,627.33	44,000.00	54,084.45	27,625.79	None	23,880.34	33,983.32	192,412.59	
Others <i>Purpose Loans</i>	<u>119,094.04</u>	<u>67,200.00</u>	<u>39,973.89</u>	<u>53,265.09</u>	<u>None</u>	<u>46,991.78</u>	<u>214,775.78</u>	<u>385,623.93</u>	-
Total Conventional	\$1,563,906.27	\$1,580,825.00	\$1,039,270.51	\$237,194.91	\$2,337,600.00	\$292,156.85	\$2,442,989.46	\$2,011,166.41	\$
FHA	None	None	810,650.00	None	None	None	1,166,439.10	40,950.00	
GI	823,930.43	41,850.00	160,000.00	None	672,025.00	None	None	649,420.70	
Others <i>FHA Title I & II</i>	<u>None</u>	<u>None</u>	<u>19,000.00</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>105,398.24</u>	-
TOTALS	\$2,387,836.72	\$1,622,675.00	\$2,028,920.51	\$237,194.91	\$3,009,625.00	\$292,156.85	\$3,609,419.56	\$2,806,935.35	\$
	=====	=====	=====	=====	=====	=====	=====	=====	
	<u>Amount</u>	<u>Percent to Total</u>							
Conventional	\$26,091,533.81	79.96%							
FHA	3,246,419.37	9.96%							
GI	2,990,625.68	9.17%							
Others	<u>291,117.72</u>	<u>0.90%</u>							
TOTAL	\$32,587,696.63	100.00%							
	=====	=====							

Capital (Lansing Office Only)	West Side Federal (Grand Rapids)	Grand Rapids Mutual Federal	East Lansing	Saginaw	Peoples (Battle Creek)	First (Saginaw)	Lansing	Totals
\$ 377,229.61	\$ 68,700.00	\$ 872,763.13	\$ 586,706.67	\$ 942,650.00	\$ 536,243.86	\$ 1,775,069.05	\$ 8,500.00	\$ 9,442,491.47
342,899.61	103,500.00	1,564,612.47	664,005.98	1,325,280.00	134,322.48	1,153,784.73	215,100.00	8,339,047.18
125,093.60	281,475.00	384,787.06	110,543.95	160,000.00	218,576.62	None	29,850.00	4,390,726.27
73,011.43	None	111,376.26	38,843.77	48,951.46	47,143.89	179,815.48	17,730.00	944,486.11
<u>273,951.85</u>	<u>215,333.54</u>	<u>125,867.52</u>	<u>79,361.21</u>	<u>234,078.61</u>	<u>336,117.06</u>	<u>774,148.46</u>	<u>15,000.00</u>	<u>2,930,782.78</u>
\$1,192,186.10	\$669,008.54	\$3,059,406.44	\$1,479,461.58	\$2,710,960.09	\$1,272,403.91	\$3,882,817.72	\$286,180.00	\$26,057,533.81
22,600.00	None	983,100.00	None	None	123,100.00	94,589.27	None	3,246,419.37
50,770.00	None	21,000.00	None	26,800.00	493,235.23	51,994.32	None	2,990,625.68
<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>None</u>	<u>168,719.53</u>	<u>None</u>	<u>None</u>	<u>293,117.77</u>
\$1,270,556.10	\$669,008.54	\$4,063,506.44	\$1,479,461.58	\$2,737,760.09	\$2,057,458.67	\$4,029,001.31	\$286,180.00	\$32,587,696.63

BREAKDOWN OF CONVENTIONAL AS TO PURPOSE OF LOAN

	Amount	Percent to Total
Construction	\$9,442,491.47	36.23%
Purchase	8,339,047.18	32.00%
Refinance	4,390,726.27	16.69%
Improvements	944,486.11	3.62%
Others	<u>2,930,782.78</u>	<u>11.44%</u>
TOTAL	\$26,057,533.81	100.000%

EXHIBIT 202

MICHIGAN NATIONAL BANK

(000.00 omitted)

STATEMENT OF CONDITION

December 31st

<i>Resources</i>	1952
Cash	46,162
U. S. Secur.	109,140
Other Secur.	300
Cash & Secur.	<u>155,602</u>
Loans Gen.	28,699
Loans FHA Mtg.	26,945
Loans Oth. Mtg.	34,852
Loans Instal.	57,809
Total Loans	<u>148,305</u>
Bank Bldgs.	2,993
Furn. & Equip.	939
Accr. Inc. Rec.	664
Other Assets	<u>645</u>
Other Assets	<u>5,241</u>
Total Resour.	<u>309,148</u>

1263a

*Exhibit 202**Liabilities*

Federal Funds	9,083
State Funds	668
County Funds	1,787
City Funds	6,337
Oth. Pub. Funds	4,218
Public Funds	<u>22,093</u>
Cash, Checks	2,819
Trust Funds	2,997
Due to Banks	2,462
Com'l Deps.	<u>134,357</u>
Com'l Deps.	<u>164,728</u>
Club Deposits	314
Time Certif.	36,894
Savgs. Deps.	<u>80,681</u>
Savgs. Deps.	117,889
Total Deps.	<u>282,617</u>
Accr. Bd. Amor.	1,337
Ac. Div. Pfd. St. ....	.....
Ac. Fed. Taxes	2,070
Ac. Int. & Exp.	1,185
Unearn. Income	6,713
Other Liab.	<u>295</u>
Other Liab.	<u>11,600</u>
Pfd. Stock	1,000
Com. Stock	5,000
Surplus	5,000
Prof. & Res.	<u>3,931</u>
Capital Funds	<u>14,931</u>
Total Liab.	<u>309,148</u>

December 31, 1952

Description	Number of Shareholders	% of Total	Par Value	Market Value
1 to 100 shares	1,685	74	486,605	
100 to 1,000 shares	524	23	1,421,072	
Over 1,000 shares	62	3	3,092,323	
Total	2,271	100	5,000,000	

DISTRIBUTION BY SHAREHOLDER

Description	Number of Shareholders	Number of Shares
Individual - Men	701	268,537
- Women	677	23,974
Joint Accounts	769	117,200
Fiduciaries	50	18,277
Institutions and Foundations	24	1,420
Brokers	7	1,434
Others	49	14,834
	2,277	500,000

DIVIDEND PAID IN COMMON STOCK

Dates	% of Dividend	Number of Shares Issued	Total Number of Shares Outstanding After Dividend
1-1-41	-	-	150,000
1-18-44	33 1/3	50,000	200,000
1-17-46	25	50,000	250,000
1-27-47	20	50,000	300,000
1-17-49	33 1/3	100,000	400,000
1-18-52	25	100,000	500,000

CASH DIVIDENDS PAID

Year	Basis	Outstanding Shares	Amount Cash Paid	Market Quote Range
12-15-41	(one only)	150,000	15,000	16-17
1942	semi-annual	150,000	150,000	20-21
1943	" "	150,000	150,000	24-25
1944	" "	200,000	200,000	31-32
1945	" "	200,000	200,000	33-34
1946	" "	250,000	250,000	38-40
1947	" "	300,000	300,000	41-42
1948	" "	300,000	300,000	53-54
1949	" "	400,000	400,000	55-56
1950	" "	400,000	400,000	57-58
1951	" "	400,000	400,000	59-60
1952	quarterly	500,000	500,000	61-62

ANALYSIS OF PREFERRED STOCK

Date	Description	Amount	Market Quote Range
12-31-40	Issue to Reconstruction Finance Co.		
1-21-41	Retired \$34,000.		
1-9-42	Retired \$100,000.		
1-7-46	Retired \$500,000.		
1-7-52	Retired \$1,000,000. Certificate issued to R. F. C.		
1-7-52	Issued \$1,000,000. Individuals and Companies		
1-31-58	Retired \$1,000,000.		

MICHIGAN NATIONAL BANK

Lansing, Michigan

ANALYSIS OF CAPITAL, SURPLUS, UNDIVIDED
PROFITS AND RESERVES FOR THE CALENDAR YEAR 1952

<u>Description</u>	<u>12-31-51</u>	<u>Debit</u>	<u>Credit</u>	<u>12-31-52</u>
Preferred Stock	1,000,000.00			1,000,000.00
Common Stock	4,000,000.00			5,000,000.00
25% Stock Dividend From Undivided Profits			1,000,000.00	
Surplus	4,000,000.00			5,000,000.00
Transferred From Undivided Profits			1,000,000.00	
Undivided Profits	2,437,057.82			1,396,522.59
Net Profit Before Dividend			2,064,329.16	
Dividends Paid in Cash		520,164.39		
Net Transfer to Reserve for Loan Losses		313,000.00		
25% Common Stock Dividend		1,000,000.00		
Transfer to Surplus		1,000,000.00		
Transfer to Reserve For Retirement of Preferred Stock		91,700.00		
Reserve For Retirement of Preferred Stock	550,200.00			641,900.00
Transferred from Undivided Profits			91,700.00	
Reserve for Losses on Loans	1,580,000.00			1,895,000.00
Net Transfer from Undivided Profits			513,000.00	
Total Capital Funds and Reserves	<u>13,287,257.82</u>	<u>3,124,864.39</u>	<u>4,669,029.16</u>	<u>14,931,422.59</u>

EXHIBIT 205

MICHIGAN NATIONAL BANK
OPERATING STATEMENT

December 31st

(000.00 omitted)

<i>Income</i>	1952
Int. Secur.	2,191
Int. Gen. Loans	1,207
Int. Mtge. Loans	2,597
Int. Instal. Loans	5,032
Total Interest	11,027
Trust Dept.	268
Service Charges	244
Exchange Charges	101
Safe, Dep. Vaults	97
Mtge Service Fees	
Misc.	159
Other Income	869
Total Oper. Income	11,896

Expenses

Advertising	370
Bankg. Qtrs. Net	564
Deprec. Equipmt.	84
Donations	100
Insur. Deposits	90
Insur. Life, Hosp., Surg.	36
Insur. Other	31
Int. Deposits	1,486
Int. Bills Payable	339
Legal	74

Maint. & Rental Equip.....	102
Memb'ships & Fees	24
Pensions	39
Postage	91
Profit Shar. Trust	150
Salaries	3,240
Mtge. Service Fees	
Staty., Print., Supplies	223
Subser. & Services	63
Taxes Intang.	119
Taxes S. S. & Unempl.....	72
Tel. and Tel.	99
Travel & Expense	95
Misc.	145
Total Operating Expenses ..	7,633
Operating Profit	4,263
Profit on Securities	2
Recov. on Loans C/O.....	15
Other Profits	44
Non-Operat. Profit	61
Loss on Securities	2
Loans Charged Off	115
Other Loans	61
Non-Operat. Losses	178
Gross Profit	4,146
Taxes Federal Income	2,082
Net Profit	2,064
Dividends Pfd. Stock	20
Dividends Com. Stock	500
Earn. Retained in Bus.	1,544

UNITED STATES DEPARTMENT OF THE TREASURY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

January 31, 1933

REPORT ON THE CONDITION OF THE BANKS

Number of Real Estate Mortgage Loans

Number of F.H.A. Real Estate Mortgage Loans

2,728

Number of U. S. Real Estate Mortgage Loans

2,708

Number of Regular National Real Estate Mortgage Loans

3,957

Number of Regular Other Than National Real Estate Mortgage Loans

655

Total Number of Real Estate Mortgage Loans

11,582

Classification	Number of Depositors	Amount
Total		
Individual or Individuals	4,897	17,956,701
All Other Types of Depositors	1,360	18,937,466
Total	6,257	36,894,167

Time Deposits of Depositors

Classification	Number of Depositors	Amount
Individual or Individuals	123,315	28,042,880
All Other Types of Depositors	1,618	2,638,760
Total	124,933	30,681,640

Business Bank Accounts

Classification	Number of Depositors	Amount
Individual or Individuals	33,896	56,132,350
All Other Types of Depositors	13,539	107,651,064
Total	47,435	163,783,414

General Deposits

ASSETS OF BANKS IN CITIES
SERVED BY MICHIGAN NATIONAL OFFICES

Balance for December 31, 1932

Little Creek		
Security National Bank	<u>75,172,668.15</u>	<u>75,172,668.15</u>
Flint		
Citizens Commercial & Savings Bank	101,561,690.68	
Genesee County Savings Bank	53,364,882.88	
Merchants & Mechanics Bank	<u>20,283,090.88</u>	<u>175,069,663.96</u>
Grand Rapids		
Central Bank	11,446,522.43	
Citizens Industrial Bank	2,141,298.73	
Michigan Trust Company	5,988,313.98	
Old Kent Bank	170,886,128.32	
Peoples National Bank	38,987,193.00	
Union Bank	<u>38,821,521.88</u>	<u>268,370,977.98</u>
Lansing		
American State Bank	41,357,785.84	
Bank of Lansing	31,388,065.30	
Central Trust Company	<u>2,816,975.88</u>	<u>75,562,826.82</u>
Marshall		
None		
Port Huron		
Peoples Savings Bank	<u>18,460,513.71</u>	<u>18,460,513.71</u>
Saginaw		
Second National Bank & Trust Co.	<u>95,166,637.98</u>	<u>95,166,637.98</u>
Grand Total		<u>663,890,766.88</u>

SOURCE

State Banking Department, Lansing, Michigan
"Sixty-fourth Annual Report of the Commissioner for the year ending
December 31, 1932."

Exhibit 208
TAXES PAID TO STATE OF MICHIGAN

1270a

For the Year 1952 By the
Following Named Institutions

	Total	Franchise or Privilege Tax (C)	Intangibles Tax (E)	Examination Fee (C)	State Unem- ployment Tax (G)	Real Property Tax (G)	Personal Property Tax (G)	Tax on Increase in Authorized Capital (D)	Use Tax (I)(G)
Chartered:									
Eastward Savings and Loan Association, Albion, Michigan	\$ 768.38	180.92	305.83	86.98	-	194.65	-	-	-
Peoples (formerly Industrial) Savings and Loan Association, Battle Creek, Michigan	8,311.50	1,442.61	2,388.01	680.53	190.80	3,326.85	282.70	-	-
East Lansing Savings and Loan Association, East Lansing, Michigan	4,188.68	812.43	1,446.81	405.99	-	797.92	125.53	600.00	-
Detroit and Northern Savings and Loan Association, Hancock, Michigan	18,537.22	5,069.02	8,553.11	2,214.34	812.54	1,456.83	431.38	-	-
Capital Savings and Loan Association, Lansing, Michigan	27,185.45	4,931.10	7,074.18	2,129.93	1,284.16	10,518.49	1,247.59	-	16.89
Union Savings and Loan Association, Lansing, Michigan	5,157.29	1,136.68	1,648.85	575.92	181.48	1,541.67	72.69	-	-
Lansing Savings and Loan Association, Lansing, Michigan	2,729.22	374.95	582.71	156.63	95.80	1,500.23	18.90	-	-
Marshall Savings and Loan Association, Marshall, Michigan	681.84	145.93	245.17	65.99	-	224.75	-	-	-
First Savings and Loan Association, Saginaw, Michigan	22,761.96	3,592.68	5,794.18	1,674.54	478.43	10,885.13	337.00	-	389.09
Saginaw Savings and Loan Association, Saginaw, Michigan	7,892.92	1,412.27	2,734.16	650.48	252.43	2,758.48	84.10	-	173.11
Total state chartered	98,214.46	19,098.59	30,773.01	8,641.33	3,296.64	33,205.00	2,599.89	600.00	579.09
Federal Chartered:									
Albion Federal Savings and Loan Association, Battle Creek, Michigan	12,510.92	-	4,196.19	-	2,004.26	5,761.96	548.51	-	-
First Federal Savings and Loan Association of Flint, Flint, Michigan	3,882.23	-	2,606.48	-	237.70	1,038.05	-	-	-
Grand Rapids Mutual Federal Savings & Loan Association, Grand Rapids, Michigan	11,845.75	-	6,198.51	-	536.41	5,110.83	-	-	-
Grand Home Federal Savings & Loan Association, Grand Rapids, Michigan	7,817.48	-	5,063.23	-	445.52	2,308.73	-	-	-
Grand Side Federal Savings and Loan Association, Grand Rapids, Michigan	1,869.84	-	1,712.13	-	-	157.71	-	-	-
Huron Federal Savings & Loan Association, Port Huron, Michigan	4,890.88	-	2,710.48	-	612.29	1,567.83	-	-	-
Total federal chartered	42,816.82	-	22,487.02	-	3,836.18	15,945.11	548.51	-	-
Totals all state and federals	141,031.28	19,098.59	53,260.03	8,641.33	7,132.82	49,150.11	3,148.40	600.00	579.09
Michigan National Bank (F) and (H)	\$ 282,968.89	-	168,499.11	-	26,203.64	88,265.14	-	-	-

includes five branches; two in Detroit, one in Grosse Pointe Woods, and two in
Flint, Michigan.
includes three branches; one in Detroit, one in Pontiac, and one in Lathrup
Village, Michigan.
amounts obtained from original tax returns filed with Building and Loan Division
of Michigan Department of State.
amount obtained from certificate of amendment of Articles of Association filed
with Building and Loan Department of Michigan Department of State.
amounts obtained from photostat copies of tax returns filed with Department of
Revenue (in evidence as Exhibits 2a through 2p).

- (F) Michigan National Bank intangible tax includes \$68,180.87 tax on capital stock.
(G) Amounts taken from worksheets prepared by auditors of Department of Revenue (in
evidence as Exhibit 208A).
(H) Information for Michigan National Bank obtained from Exhibit 208-B.
(I) Not included in the total taxes paid (complete use tax information not available).

Exhibit 208A

CONSOLIDATED OF MICHIGAN STATE TAXES PAID IN 1958 BY SAVINGS
& LOAN ASSOCIATIONS (Other than Franchise Tax, Intangible Tax,
Examination Fees, and Tax on Increase in Authorized Capital)

		Unemployment Tax	Real Property Tax	Personal Property Tax	Use Tax	Total
State Chartered						
Hammstead Savings & Loan Ass'n	Albion	\$ —	\$ 194.65	\$ —	\$ —	\$ 194.65
Peoples Savings & Loan Ass'n	Battle Creek	190.80	3,326.85	282.70	—	3,800.35
East Lansing Savings & Loan Ass'n	East Lansing	—	797.92	125.53	—	923.45
Detroit & Northern Savings & Loan Ass'n	Hammock	812.54	1,456.33	431.38	—	2,700.25
Capital Savings & Loan Ass'n	Lansing	1,204.16	10,518.49	1,347.99	16.09	13,067.13
Union Savings & Loan Ass'n	Lansing	181.48	1,541.67	72.69	—	1,795.84
Marshall Savings & Loan Ass'n	Marshall	—	224.75	—	—	224.75
First Savings & Loan Ass'n	Saginaw	498.43	10,885.13	337.00	309.09	12,009.65
Saginaw Savings & Loan Ass'n	Saginaw	253.43	2,798.48	84.10	173.11	3,269.12
Lansing Savings & Loan Ass'n	Lansing	95.80	1,500.23	18.90	—	1,614.93
Federal Chartered						
Calhoun Federal Savings & Loan Ass'n	Battle Creek	2,004.26	5,761.96	548.51	—	8,314.73
First Federal Savings & Loan Ass'n	Flint	237.70	1,038.05	—	—	1,275.75
Grand Rapids Mutual Fed. Sav'gs & Loan Ass'n	Grand Rapids	536.41	5,110.83	—	—	5,647.24
Mutual Home Federal Savings & Loan Ass'n	Grand Rapids	445.52	2,388.73	—	—	2,754.25
West Side Federal Savings & Loan Ass'n	Grand Rapids	—	157.71	—	—	157.71
Citizens Federal Savings & Loan Ass'n	Port Huron	612.29	1,567.83	—	—	2,180.12
TOTALS		\$7,132.82	\$49,150.11	\$3,148.40	\$579.09	\$60,010.42

Exhibit 208A

1271a

MICHIGAN NATIONAL BANKLansing, MichiganACCRUED TAX EXPENSE FOR CALENDAR YEAR 1952

<u>Description</u>	<u>Amount</u> <u>Accrued</u>
Michigan Intangible Tax	118,818.24 A
Unemployment Tax - Michigan	26,203.64
- Federal	<u>7,862.45</u>
	34,066.09
Social Security Tax	43,739.89
Real Estate Tax	88,266.14
Revenue Stamp Tax	<u>23.10</u>
Total	<u>285,913.46</u>

Note: Accrued Michigan Intangible Taxes, Real Estate Taxes and Revenue Stamp Taxes are the same as the actual expenditure. Accrued Unemployment Taxes and Social Security Taxes are greater than the actual expenditure due to the fact the tax returns are not completed until after the close of the year.

A. Paid on deposits	<u>\$100,318.24</u>
Paid on Shares	18,500.00
Additional paid on shares for the calendar year 1952 (paid in 1953) including interest).	49,680.87
Total paid on shares	<u>\$ 68,180.87</u>

DATA SUMMARIZED AS OF DECEMBER 31, 1962 (1)On the Following Named Institutions

	<u>Total assets</u>	<u>First mortgage loans and contracts</u>		<u>Cash and securities (2)</u>		<u>Savings shares</u>	
		<u>Amount</u>	<u>% to assets</u>	<u>Amount</u>	<u>% to assets</u>	<u>Amount</u>	<u>% to assets</u>
Homestead Savings and Loan Association, Albion, Michigan	944,294.30	703,667.07	74.5	220,113.07	23.3	764,563.68	81.0
Peoples (formerly Industrial) Savings and Loan Association, Battle Creek, Michigan	7,460,158.47	5,551,844.68	74.4	1,486,817.78	19.9	5,970,038.34	80.0
East Lansing Savings and Loan Association, East Lansing, Michigan	4,548,208.52	3,939,557.39	86.6	399,036.07	8.8	3,647,226.59	80.2
Detroit and Northern Savings and Loan Association, Hancock, Michigan (4)	24,676,981.29	20,943,701.00	85.0	3,039,347.23	12.3	21,397,311.41	86.7
Capitol Savings and Loan Association, Lansing, Michigan (4)	22,576,629.35	18,668,954.94	82.7	2,868,016.04	12.7	18,658,656.94	82.6
Union Savings and Loan Association, Lansing, Michigan	5,978,242.20	5,065,506.02	84.7	693,144.91	11.6	4,364,936.75	73.0
Lansing Savings and Loan Association, Lansing, Michigan	1,612,433.52	1,239,008.84	76.8	275,963.65	17.1	1,456,783.49	90.3
Marshall Savings and Loan Association, Marshall, Michigan	712,075.37	639,801.82	89.9	50,680.88	7.1	612,913.72	86.0
First Savings and Loan Association, Saginaw, Michigan	17,804,231.99	13,916,919.40	78.2	3,177,047.03	17.8	14,491,055.37	81.4
Saginaw Savings and Loan Association, Saginaw, Michigan	7,612,653.76	6,223,152.36	81.7	1,012,938.08	13.3	6,835,396.48	89.8
Total state	93,925,908.77	76,892,113.51	82.0	13,223,104.74	14.1	78,198,863.37	83.2
Calhoun Federal Savings and Loan Association, Battle Creek, Michigan	12,349,650.62	9,218,353.90	74.6	2,664,661.93	21.6	10,512,930.98	85.1
First Federal Savings and Loan Association, Flint, Michigan	8,011,097.48	6,401,442.60	79.9	1,350,827.41	16.9	6,516,203.76	81.3
Grand Rapids Mutual Federal Savings and Loan Association, Grand Rapids, Michigan	17,294,993.57	13,235,630.72	76.5	3,564,688.67	20.6	15,496,286.43	89.6
Mutual Home Federal Savings and Loan Association, Grand Rapids, Michigan	14,128,779.59	11,546,773.61	81.7	2,117,184.16	15.0	12,658,070.55	89.6
West Side Federal Savings and Loan Association, Grand Rapids, Michigan	4,759,365.10	3,501,441.55	73.6	1,135,791.48	23.9	4,280,331.46	89.9
Citizens Federal Savings and Loan Association, Port Huron, Michigan	7,802,536.53	6,370,567.53	81.6	1,059,946.44	13.3	6,776,205.81	86.8
Total federal	64,346,422.89	50,274,209.91	78.1	11,873,120.09	18.5	56,240,028.99	87.4
Grand totals	\$ 158,272,331.66	127,166,323.42	80.4	25,096,224.83	15.8	134,438,912.36	84.9

DATA SUMMARIZED AS OF DECEMBER 31, 1952 (1)On the Following Named Institutions, Cont.

	<u>Local reserves and other contingency reserves</u>		
	<u>Amount</u>	<u>\$ to assets</u>	<u>\$ to savings shares</u>
Wood Savings and Loan Association, Eaton, Michigan	32,879.88	3.5	4.3
Wood (formerly Industrial) Savings and Loan Association, Battle Creek, Michigan	202,145.45	2.7	3.4
Lansing Savings and Loan Association, East Lansing, Michigan	121,380.47	2.7	3.3
Flint and Northern Savings and Loan Association, Hancock, Michigan	1,727,406.91	7.0	8.1
Flint Savings and Loan Association, Lansing, Michigan	2,500,000.00	11.0	13.4
Flint Savings and Loan Association, Lansing, Michigan	596,600.00	9.9	13.7
Flint Savings and Loan Association, Lansing, Michigan	88,875.93	5.5	6.1
Flint Savings and Loan Association, Marshall, Michigan	21,515.08	3.0	3.5
Flint Savings and Loan Association, Saginaw, Michigan	1,321,851.79	7.4	9.1
Flint Savings and Loan Association, Saginaw, Michigan	<u>276,103.57</u>	<u>3.6</u>	<u>4.0</u>
Total state	<u>\$6,888,558.88</u>	<u>7.4</u>	<u>8.8</u>
Federal Savings and Loan Association, Battle Creek, Michigan	935,150.98	7.6	8.9
Federal Savings and Loan Association, Flint, Michigan	351,279.10	4.4	5.4
Grand Rapids Mutual Federal Savings and Loan Association, Grand Rapids, Michigan	801,863.24	4.6	5.2
Grand Home Federal Savings and Loan Association, Grand Rapids, Michigan	562,192.59	4.0	4.4
Grand Side Federal Savings and Loan Association, Grand Rapids, Michigan	279,244.29	5.9	6.5
Grand Federal Savings and Loan Association, Port Huron, Michigan	<u>307,815.66</u>	<u>4.0</u>	<u>4.5</u>
Total federal	<u>3,237,545.86</u>	<u>5.0</u>	<u>5.8</u>
Grand totals	<u>\$ 10,126,104.74</u>	<u>6.4</u>	<u>7.5</u>

The above data on state savings and loan associations was prepared from information contained in Exhibits 36-A through 36-J and 72-C (monthly reports filed by associations, with Secretary of State Office showing condition at December 31, 1952). The figures on federal associations are taken from Exhibits 45-A, 57-F, 61-F, 73-E, 77-E and 81-E (annual reports to Federal Home Loan Bank of Indianapolis as of December 31, 1952).

Excludes capital stock in Federal Home Loan Bank.

Includes amounts of all locations.

DATA ON THE FOLLOWING NAMED SAVINGS AND LOAN ASSOCIATIONS
SUMMARIZED AS FOR 1952 (1)

	Gross income	Interest on mortgages and contracts		Total interest income		Net income before dividends and reserve additions	Dividends
		Amount	% to gross income	Amount	% to gross income		
Westland Savings and Loan Association, Albion, Michigan	\$ 40,682.25	34,455.71	84.6	38,912.42	95.6	25,236.93	13,296.52
Peoples (formerly Industrial) Savings and Loan Association, Battle Creek, Michigan	295,239.71	238,614.43	80.8	262,185.76	88.8	173,544.08	104,966.51
East Lansing Savings and Loan Association, East Lansing, Michigan	184,851.33	163,716.18	88.6	172,497.69	93.3	126,827.50	92,698.14
Troitt and Northern Savings and Loan Association, Hancock, Michigan (4)	1,060,005.02	917,469.65	86.6	971,035.70	91.6	621,726.18	454,973.37
Capital Savings and Loan Association, Lansing, Michigan (4)	1,107,776.01	913,870.82	82.5	963,845.03	87.0	777,612.13	682,801.63
Michigan Savings and Loan Association, Lansing, Michigan	266,081.03	241,626.28	90.8	258,986.90	97.3	199,189.97	134,538.79
Lansing Savings and Loan Association, Lansing, Michigan	73,497.79	67,132.98	91.3	70,305.37	95.6	51,064.80	41,842.32
Marshall Savings and Loan Association, Marshall, Michigan	35,475.24	34,583.30	97.5	35,036.04	98.7	19,556.97	16,906.80
First Savings and Loan Association, Saginaw, Michigan	781,560.33	611,091.63	78.2	685,250.66	87.7	496,153.42	318,814.75
Saginaw Savings and Loan Association, Saginaw, Michigan	287,661.63	262,830.36	91.4	260,842.26	97.6	199,730.44	135,987.74
Total state chartered	<u>4,132,830.34</u>	<u>3,485,391.34</u>	<u>84.3</u>	<u>3,738,897.83</u>	<u>90.4</u>	<u>2,690,642.42</u>	<u>1,996,626.57</u>
Albion Federal Savings and Loan Association, Battle Creek, Michigan	515,619.40	436,422.20	84.6	479,753.53	93.0	353,211.72	183,819.57
First Federal Savings and Loan Association, Flint, Michigan	317,966.50	271,359.69	85.3	296,242.37	93.2	224,496.57	142,845.59
Grand Rapids Mutual Federal Savings and Loan Association, Grand Rapids, Michigan	676,783.54	584,970.40	86.4	637,782.93	94.2	509,274.08	348,339.94
Mutual Home Federal Savings and Loan Association, Grand Rapids, Michigan	542,337.10	491,792.88	90.7	529,797.58	97.7	418,201.46	280,001.09
West Side Federal Savings and Loan Association, Grand Rapids, Michigan	188,151.86	166,153.71	88.3	186,292.28	99.0	157,341.43	98,097.14
Citizens Federal Savings and Loan Association, Port Huron, Michigan	356,212.67	314,118.00	88.2	333,385.62	93.6	213,007.23	141,240.92
Total federal chartered	<u>2,597,071.07</u>	<u>2,264,816.88</u>	<u>87.2</u>	<u>2,463,254.36</u>	<u>94.8</u>	<u>1,875,532.49</u>	<u>1,194,344.25</u>
Grand totals	\$ <u>6,729,901.41</u>	<u>5,750,208.22</u>	<u>85.4</u>	<u>6,202,152.19</u>	<u>92.1</u>	<u>4,566,174.91</u>	<u>3,190,970.82</u>

Net income before reserve
additions and income taxes (2)

Amount \$ to assets

11,940.41 1.28

68,577.57 .92

34,129.36 .75

168,752.81 .68

94,810.50 (3) .42

64,651.18 1.08

9,222.48 .57

2,650.17 .37

177,538.67 .99

63,742.70 .84

694,015.85 .74

169,392.15 1.37

81,650.98 1.02

160,934.14 .93

138,200.37 .98

59,244.29 1.24

71,766.31 .92

681,188.24 1.06

1,375,204.09 .87

DATA ON THE FOLLOWING NAMED SAVINGS AND LOAN ASSOCIATIONS
SUMMARIZED AS FOR 1952 (1), CONT.

	Total tax burden			State Franchise & Intangible taxes		
	Amount	% to net income after adding back dividends	% to net income	Amount	% to net income after adding back dividends	% to net income
Westend Savings and Loan Association, Albion, Michigan	\$ 768.38	3.0	6.4	486.75	1.9	4.1
Poples (formerly Industrial) Savings and Loan Association, Battle Creek, Michigan	8,311.50	4.8	12.1	3,830.62	2.2	5.6
West Lansing Savings and Loan Association, East Lansing, Michigan	4,188.68	3.3	12.3	2,259.24	1.8	6.6
Troitt and Northern Savings and Loan Association, Hancock, Michigan	18,537.22	3.0	11.2	13,622.13	2.2	8.2
Capitol Savings and Loan Association, Lansing, Michigan	27,185.45	3.5	28.4	12,006.28	1.5	12.7
Union Savings and Loan Association, Lansing, Michigan	5,157.29	2.6	8.0	2,785.53	1.4	4.3
Lansing Savings and Loan Association, Lansing, Michigan	2,729.22	5.3	29.5	957.66	1.9	10.4
Marshall Savings and Loan Association, Marshall, Michigan	681.84	3.5	25.7	391.10	2.0	14.7
First Savings and Loan Association, Saginaw, Michigan	22,761.96	4.6	12.8	9,386.88	1.9	5.3
Saginaw Savings and Loan Association, Saginaw, Michigan	<u>7,892.92</u>	<u>4.0</u>	<u>12.4</u>	<u>4,146.43</u>	<u>2.1</u>	<u>6.5</u>
Total state chartered	<u>98,214.46</u>	<u>3.6</u>	<u>14.1</u>	<u>49,871.60</u>	<u>1.9</u>	<u>7.2</u>
Alhoun Federal Savings and Loan Association, Battle Creek, Michigan	12,510.92	3.5	7.4	4,196.19	1.2	2.5
First Federal Savings and Loan Association, Flint, Michigan	3,882.23	1.7	4.8	2,606.48	1.2	3.2
Grand Rapids Mutual Federal Savings and Loan Association, Grand Rapids, Michigan	11,845.75	2.2	7.4	6,198.51	1.2	3.9
Central Home Federal Savings and Loan Association, Grand Rapids, Michigan	7,817.48	1.9	5.7	5,063.23	1.2	3.7
West Side Federal Savings and Loan Association, Grand Rapids, Michigan	1,869.84	1.2	3.2	1,712.13	1.1	2.9
Citizens Federal Savings and Loan Association, Port Huron, Michigan	<u>4,890.60</u>	<u>2.3</u>	<u>6.8</u>	<u>2,710.48</u>	<u>1.3</u>	<u>3.8</u>
Total federal chartered	<u>42,816.82</u>	<u>2.3</u>	<u>6.3</u>	<u>22,487.02</u>	<u>1.2</u>	<u>3.3</u>
Grand totals	\$ <u>141,031.28</u>	<u>3.1</u>	<u>10.2</u>	<u>72,358.62</u>	<u>1.6</u>	<u>5.2</u>

- 1) The tax information shown on this schedule is from Exhibit 208 (Data on 1952 taxes). The operating data for state associations is taken from the Building and Loan Division audit papers on file with the Building and Loan Division of the Office of the Secretary of State. Operating information on federal associations is taken from Exhibits 45-F, 57-F, 61-F, 73-E, 77-E and 81-E (annual reports to Federal Home Loan Bank of Indianapolis for 1952).
- 2) Does not include miscellaneous items in undivided profits since these items have no material effect on operations.
- 3) Capitol Savings and Loan was the only one having a provision for federal income taxes, the amount being \$13,250.
- 4) Includes amounts for all locations.

**ASSET ANALYSIS OF MICHIGAN NATIONAL BANK
AS OF DECEMBER 31, 1958.**

**Ratio to
Total Assets**

Total assets per balance sheet

305,807,549.55

Add back - reserve for bad debts,
unallocated charge-offs and other
valuation reserves

1,891,000.00

Total assets without reserve accounts

307,698,549.55

Cash and securities (includes stock in
Federal Reserve Bank)

153,849,845.55

50.0

MICHIGAN NATIONAL BANK DATA SUMMARIZED FROM COPY
OF 1952 OPERATING STATEMENT

		Per Cent to Gross Income
Gross operating income	\$ 11,896,705	
Total interest income	11,027,213	92.7
Interest on mortgage loans (would also include commercial and farm)	<u>2,597,197</u>	21.8
Net profits	\$ 2,064,329	
Add back federal income taxes	<u>2,082,350</u>	
Net income before above items	\$ 4,146,679	
Additional intangibles tax paid for 1952 (subject of suit)	<u>49,680</u>	
True Net Income	\$ 4,096,999	
Earnings per share after additional intangibles tax paid for 1952, \$20,000.00 preferred dividend, and after federal income taxes.		\$3.99

Note: Operating statement of plaintiff introduced as Exhibit 205.

Michigan National Bank and
Sixteen Specific Savings and Loan Associations
1952

	Michigan National Bank	Sixteen Specific Savings and Loan Associations	Ten State Savings and Loan Associations	Six Federal Savings and Loan Associations
Total assets - December 31, 1952 (note 1)	\$ 307,694,589	158,272,331	93,925,906	64,346,423
Gross income	11,896,706	6,729,901	4,132,030	2,597,072
Interest income	11,027,213	6,202,152	3,738,697	2,483,255
Interest on mortgage loans and land contracts	2,597,197	5,750,208	3,485,391	2,264,217
Interest to depositors	1,486,552	-	-	-
Dividends on savings shares	-	3,180,970	1,996,626	1,194,344
True net income (note 2)	4,096,999	1,375,204	694,015	681,189
Ratios:				
Interest income to gross income	92.7	92.1	90.5	94.8
Interest on mortgage loans and land contracts to gross income	21.8	85.4	84.3	87.2
True net income to:				
Total assets	1.3	.9	.7	1.1
Gross income	34.4	20.4	16.8	26.2
Gross income to total assets	3.9	4.2	4.4	4.0
State and local taxes:				
State:				
Franchise tax	\$ -	19,099	19,099	-
Intangibles tax (note 2)	168,499	53,280	30,773	22,487
Examination fee	-	8,641	8,641	-
Unemployment	26,203	7,133	3,296	3,836
Tax on increase in authorized capital	-	800	800	-
Total state	194,702	80,953	62,409	26,323
Local:				
Real property taxes	88,266	48,150	33,206	15,945
Personal property taxes	-	3,148	2,600	546
Total local	88,266	51,298	35,806	16,491
Grand totals	\$ 282,968	141,031	98,215	42,814
Ratio of state and local taxes to:				
True net income	6.9	10.2	14.1	6.3
True net income after adding back dividends on savings	-	3.1	3.6	2.3
Total assets	.001	.089	.104	.067
Ratio of franchise and intangible taxes to:				
True net income	4.1	5.2	7.2	3.3
True net income after adding back dividends on savings	-	1.6	1.9	1.2
Total assets	.065	.046	.063	.035

See accompanying notes.

Exhibit 213

1279a

Exhibit 215

COMPARISON OF ASSETS AND CERTAIN INVESTMENTS OF MICHIGAN NATIONAL
BANK AND 16 SPECIFIC SAVINGS AND LOAN ASSOCIATIONS AS OF DECEMBER 31, 1952

	Michigan National Bank	Specific Savings and Loan Associations
Total Assets	\$ 307,694,569	\$ 158,272,331
First mortgage loans and land contracts	62,075,029	127,166,323
Cash and securities (Excludes stock in Federal Home Loan Bank and stock in Federal Reserve Bank)	153,849,265	25,096,224
Ratio:		
First mortgage loans and land contracts to total assets	20.2(1)	80.35
Cash and securities to total assets	50.0	15.86
Remaining assets to total assets	29.8(2)	3.79

(1) These are: Homestead Savings & Loan Ass'n, Albion; Peoples (formerly Industrial) Savings & Loan Ass'n, Battle Creek; East Lansing Savings & Loan Ass'n, East Lansing; Detroit and Northern Savings & Loan Ass'n, Hancock; Capital Savings & Loan Ass'n, Lansing; Union Savings & Loan Ass'n, Lansing; Marshall Savings & Loan Ass'n, Marshall; First Savings & Loan Ass'n, Saginaw; Saginaw Savings & Loan Ass'n, Saginaw; West Side Federal Savings & Loan Ass'n, Grand Rapids; Mutual Home Federal Savings & Loan Ass'n, Grand Rapids; Grand Rapids Mutual Federal Savings & Loan Ass'n, Grand Rapids; Calhoun Federal Savings & Loan Ass'n, Battle Creek; First Federal Savings & Loan Ass'n of Flint, Flint; Citizens Federal Savings & Loan Ass'n, Port Huron; and Lansing Savings & Loan Ass'n, Lansing.

(2) Ratio of first mortgage loans on residential properties is 16.7.

(3) Includes 28.0% other loans.

Notes: Data obtained from Exhibits Nos. 3 and 209, and 211.

Table 2

Proportion of Time Deposits to Total Assets of All National Banks in U.S.A.

End of June (1)	Total Assets of All National Banks in U.S.A. \$(000) (2)	Total Time Deposits of all National Banks in U.S.A.(a) \$(000) (3)	Proportion of Col. 3 to Col. 2 %
	(4)		
1913	11,036,980(1)	1,349,986(1)	12.2
1915	11,795,685(j)	1,285,428(j)	10.9
1919	20,799,550(e)	2,784,940(e)	13.4
1930	29,116,539(e)	3,003,000(e)	27.5
1940	36,885,080(h)	7,875,792(h)	21.4
1952	101,541,564(b)	20,720,190(b)	20.4
1957(f)	104,047,803(g)	27,761,505(g)	26.7

Table 1

Selected Assets and Liabilities of All National Banks in U.S.A., on Selected Dates Since 1865
(In millions of dollars)

	July 3, 1865	June 30, 1875	Sept. 5, 1900	June 4, 1913	June 30, 1919	June 30, 1930	June 29, 1940	Dec. 31, 1952	Dec. 31, 1957
Individual deposits subject to check	328.4	686.5	2,508.2	4,866.2	8,697.7	10,926.2	15,977.0	26,682.9	28,715.5
United States Gov. deposits	58.0	10.2	93.8	68.4	660.9	172.0	365.0	3,251.6	2,484.1
Time deposits (total)	•	•	•	1,330.0a	2,784.9	8,732.6	8,355.0	23,118.5	21,555.3
Total deposits	436.4	696.7	2,602.0	6,021.8	12,939.9	23,268.9	33,074.4	99,297.8	109,435.3
National bank notes	131.4	318.1	283.9	722.1	677.2	652.3	0	0	0
Demand & other short-term loans (mainly)	•	972.9	2,686.8	6,066.2	10,826.2	13,414.8	7,176.0	28,373.4	28,986.2
Loans secured by real estate mortgages	•	•	•	76.8a	184.0	1,473.0	2,003.0	8,264.6	12,480.5
Total loans	362.4	972.9	2,686.8	6,143.0	11,010.2	14,887.8	9,179.0	36,638.0	51,466.7
United States bonds	352.7	402.0	408.7	788.6	3,176.3	2,753.9	9,111.0	35,936.4	21,338.1
All other bonds and securities	12.6	32.0	367.3	1,094.2	1,816.6	4,134.3	3,794.0	8,355.9	9,643.6
Total investments	404.3	434.0	776.0	1,882.8	4,992.9	6,888.2	12,905.0	44,292.3	40,981.7
Total assets	1,126.4	1,913.2	5,048.1	11,036.9	20,799.6	29,116.5	36,885.0	108,132.7	111,429.4
Currency outside banks in U.S.A.d	770.1	798.2	1,331.0	1,878.0	3,993.0	3,369.0	6,699.0	27,500.0	28,301.0
Demand deposits adjusted in U.S.A.e	N.A.	1,173.5f	4,420.0	9,140.0	17,624.0	21,706.0	21,962.0	101,200.0	110,254.0
Money supply (demand deposits adjusted and currency outside banks)e	N.A.	1,971.7	5,751.0	10,998.0	21,217.0	25,075.0	38,661.0	128,700.0	138,555.0
Proportion of nat'l bk. notes to currency outside banks in U.S.A. (%)	17.1%	39.9%	21.3%	38.9%	18.9%	19.4%			
Proportion of "indiv. dep. subject to check" of nat'l bks. to "demand dep. adjusted" (%)		58.9%	56.7%	53.2%	49.4%	50.3%	50.0%	56.0%	53.3%

EXHIBIT 219

12828

Table 3

Real Estate Loans of All National Banks in U.S.A. on Selected Dates
(In Thousands of Dollars)

	Secured by Farm Land (1)	Secured by Residential Properties (2)	Secured by Other Properties (3)	Total Real Estate Loans (4)	Total Assets(b) (5)	Proportion of Col. 4 to Col. 5 % (6)	Proportion of Col. 2 to Col. 5 % (7)
June 4, 1913				n.a.	11,036,980(g)		
June 23, 1915				150,995(h)	11,795,685(h)	1.3	
June 30, 1919				163,988(f)	20,799,550(f)	0.9	
June 30, 1930	296,970(e)	1,176,031(e)		1,473,001	29,116,500	5.1	
June 29, 1940	294,456(a)	1,222,469(a)	485,927(a)	2,002,852	36,885,000	5.4	3.5
Dec. 31, 1952	402,931(e)	6,516,750(e)	1,344,949(e)	8,264,630	108,132,700	7.6	6.0
Dec. 31, 1957	523,131(a)	9,436,494(a)	2,520,917(a)	12,480,542	111,429,400	11.2	8.5

EXHIBIT 220

1283a

Table 4.

Proportion of Total Savings Accounts to Total Assets of All Savings and Loan Associations
in U.S.A. and in Michigan on Selected Dates

End of June (1)	United States			Michigan- All Associations			Michigan- State-Chartered Associations		
	Total assets \$(000) (2)	Total savings accounts \$(000) (3)	Proportion of col. 3 to col. 2 % (4)	Total assets \$(000) (5)	Total savings accounts \$(000) (6)	Proportion of col. 6 to col. 5 % (7)	Total assets(b) \$(000) (8)	Total savings accounts(b) \$(000) (9)	Proportion of col. 9 to col. 8 % (10)
1870									
1893	473,137(d)			5,474(c)					
1900	571,367(d)			10,118(c)					
1913	1,240,479(d)			24,009(c)					
1918	1,898,344(d)			37,924(c)	32,508	85.7	17,924	32,508	85.7
1919	2,126,680(d)			42,408(c)					
1920	2,519,915(d)	1,700,000(e)	67.5						
1930	8,829,000(a)	6,296,000(a)	71.3	167,200(e)					
1936							95,150	83,284	87.5
1940	5,733,000(a)	4,543,000(a)	79.2	116,453(r)	99,446(r)	85.4	68,386	57,250	83.8
1952	22,585,000(a)	19,143,000(a)	84.8	537,695(r)	468,153(r)	87.0	161,041	134,250	83.4
1957	48,200,000(a)	42,095,000(a)	87.3	1,249,820(r)	1,122,837(r)	90.8	403,263	358,347	88.9

Exhibit 221

1284a

Table 5

Proportion of Total Savings Deposits to
Total Assets of All Mutual Savings Banks
in U.S.A. on Selected Dates

Year (1)	Total Assets \$(000) (2)	Total Savings Deposits \$(000) (3)	Proportion of Col. 3 to Col. 2 %
	(2)	(3)	(4)
1900	2,336,460(g)	2,134,471(g)	91.4
1913	4,104,640(r)	3,769,553(r)	91.8
1919	5,171,551(e)	4,751,113(e)	91.9
1930	10,295,308(b)	9,205,258(b)	89.4
1940	11,932,218(d)	10,628,289(d)	88.9
1952	25,233,443(a)	22,528,074(a)	89.5
1957	35,167,860(e)	31,663,752(e)	90.0

Exhibit 222a

Proportion of Time and Savings Deposits or Savings Share Accounts
to Total Assets of National Banks, Savings and Loan Associations,
and Mutual Savings Banks in Selected Years, 1913-1957 1/
(In per cent)

Year	All national banks in U.S.A.	All savings and loan associations in U.S.A.	All savings and loan associations in U.S.A.	All Mutual Savings Banks in U.S.A.
1913	18.2	n.a.	n.a.	21.8
1918	n.a.	n.a.	85.7	n.a.
1919	13.4	n.a.	n.a.	21.9
1930	27.5	71.3	n.a.	89.4
1940	31.4	79.2	85.4	88.9
1948	30.4	86.8	87.0	89.5
1957	36.7	87.3	89.8	90.0

1/ Abstracted from Exhibits 218, 221, and 222

Table 6

**Classification of Time and Savings Deposits of All National Banks
in the United States on Selected Dates***
(In millions of dollars)

Class of Deposits	Dec. 31, 1957	Dec. 31, 1958	June 29, 1960	June 30, 1960	June 30, 1969
Individuals, partnerships and corporations, total	29,136.7	21,517.2	7,875.7	8,003.0	
Savings (pass book accounts)			6,977.7	6,070.7	
Certificates of deposit			533.5	1,337.5	898.2
Other time deposits			364.5	574.8	1,784.4(a)
U.S. Government, including postal savings	230.2	223.5	46.2	108.0	94.1
States and political subdivisions	1,668.2	1,008.2	394.4	437.8	8.2
Banks	518.2	304.7	98.7	203.8	
Total time deposits	31,555.3	23,118.5	8,355.0	8,732.6	2,784.9
Per cent of time deposits of individuals, etc. to total time deposits	92.3%	93.1%	94.3%	91.4%	
Per cent of savings (pass book accounts) to total time deposits			83.5%	69.4%	

Sources: for 1957 - Annual Report of Comptroller of the Currency, 1957, pp. 184-185; for 1958 - Ibid., 1958, pp. 12 and 156-157; for 1960, Ibid., p. 261; for 1930, Ibid., p. 116; for 1919, Ibid., p. 185.

(a) Includes savings (pass book accounts) and banks

* Time deposits first reported separately by Comptroller of the Currency as of Sept. 1, 1910 when "certificates of deposits due on and after 30 days, and other time deposits" of all national banks were \$433.2 million. Ibid., 1915, Vol. II, p. 875.

E21011 223

1287a

Table 7

**Principal Sources of Funds of All Savings and Loan Associations,
All National Banks, and All Mutual Savings Banks
in the United States at the End of 1938
(In millions of dollars)**

Savings and loan associations^{a/}

(1)	Reserves and undivided profits	1,698
(2)	Savings capital (shares)	19,195
(3)	Total assets	22,660

Proportion of (1) to (3)	7.3%
Proportion of (2) to (3)	84.7%

a/ Source: Federal Reserve Bulletin, September, 1938, p. 1091.

National banks^{b/}

(1)	Capital stock, surplus and undivided profits	7,059
(2)	Total deposits	99,878
(3)	Total assets	108,133

Proportion of (1) to (3)	6.5%
Proportion of (2) to (3)	91.8%

b/ Controller of the Currency, Annual Report, 1938, pp. 12-13.

Mutual savings banks^{c/}

(1)	Total capital accounts	2,479
(2)	Total deposits	22,621
(3)	Total assets	25,233

Proportion of (1) to (3)	9.8%
Proportion of (2) to (3)	89.6%

c/ Controller of the Currency, Annual Report, 1938, pp. 174-175.

Exhibit 234a

Proportion of Real Estate Loans to Total Assets of All National Banks and
of All Savings and Loan Associations in U.S.A. on Selected Dates.
(In per cent)

	(1) National banks, total real estate loans to total assets	(1) National banks, residential real estate loans to total assets	(2) Savings and loan associations, mortgage loans to total assets
June 30, 1915	1.3		
June 30, 1919	0.9		
June 30, 1930	5.1		
June 29, 1940	5.4	3.5	
Dec. 31, 1941			75.7
Dec. 31, 1952	7.6	6.0	81.2
Dec. 31, 1957	11.2	8.5	83.1

(1) Abstracted from Exhibit 230.

(2) Savings and loan associations (In millions of dollars)

End of Year	Mortgage Loans	Total Assets
1941	4,378	6,049
1952	18,396	22,660
1957	40,119	48,275

Source: Federal Reserve Bulletin, Sept. 1958, p. 1091.

Subject: 2276

**Residential Real Estate Loans of All National Banks and
of Michigan National Bank, December 31, 1938
(In thousands of dollars)**

Type of loan	<u>All national banks</u>		<u>Michigan National Bank</u>	
	<u>Amount</u>	<u>Per cent of total</u>	<u>Amount</u>	<u>Per cent of total</u>
Conventional loans secured by residential property	2,784,122	38.6	15,125.5	29.5
Loans insured by Federal Housing Administration	2,094,575	32.1	21,944.6	32.4
Loans insured or guaranteed by Veterans' Administration	<u>1,876,051</u>	<u>22.4</u>	<u>2,829.1</u>	<u>15.1</u>
Total residential real estate loans	6,754,750	100.00	39,899.2	100.00

ENCLOSURE 2276

12304

EXHIBIT 225

National Bank X

<u>Assets</u>	
Loans	\$ 400
Investments	300
Cash, etc.	200
Other assets	50
Total assets	\$1,100

<u>Liabilities</u>	
Capital stock, surplus and undivided profits	\$ 100
Total deposits	<u>1,000</u>
Total liabilities	\$1,100

Savings and Loan Y

<u>Assets</u>	
Real estate loans	\$ 900
Investments	100
Cash, etc.	50
Other assets	50
Total assets	\$1,100

<u>Liabilities</u>	
Reserves and undivided profits	\$ 100
Savings share accounts	<u>1,000</u>
Total liabilities	\$1,100

Comparison of Rates of Taxation on Total Assets of the
Michigan Intangibles Tax on National Banks and the
Michigan Franchise Tax on State-Chartered Savings
and Loan Associations

All National Banks in Michigan as of Dec. 31, 1952 ^{1/}

Capital, surplus, and undivided profits	\$166,724,000
Total assets	\$3,728,340,000
Intangible Tax of 5 1/2 mills on \$166,724,000	\$916,982
Proportion of Intangibles Tax to total assets	.02459%

All State-Chartered Savings and Loan Associations
in Michigan as of June 30, 1952 ^{2/}

Reserves	\$ 10,178,000	
Savings share accounts	134,290,000	
Total	\$144,468,000	
Total Assets		\$161,041,000
Franchise tax of 1/2 mill on \$144,468,000		\$36,117
Proportion of franchise tax to total assets		.02243%

^{1/} Source: Comptroller of the Currency, Abstract of Reports of Condition of National Banks, No. 245, pp. 5 and 8

^{2/} Source: Exhibit 221, "Reserves and undivided profits" as reported by Michigan Savings and Loan Leagues.

Exhibit 226

1292a

Stipulation Concerning Activities of Certain Savings and
Loan Associations
STATE OF MICHIGAN

IN THE COURT OF CLAIMS FOR THE STATE OF MICHIGAN

MICHIGAN NATIONAL BANK, et al

Plaintiffs

vs

Docket No. 473

STATE OF MICHIGAN, et al

Defendants

**STIPULATION CONCERNING ACTIVITIES OF
CERTAIN SAVINGS AND LOAN ASSOCIATIONS -
PURSUANT TO PAGES 539, 540 AND 573 OF RECORD.**

IT IS HEREBY STIPULATED by and between the respective parties hereto, through their attorneys of record, that Detroit and Northern, Union, First Federal (Flint), Marshall, Calhoun Federal, Homestead, Mutual Home, Citizens Federal, Capital, West Side, Grand Rapids Mutual, East Lansing, Saginaw, Peoples, First of Saginaw and Lansing Savings and Loan Associations do not maintain the following facilities or conduct the following operations:

1. Loan money to finance companies.
2. Make unsecured loans on the strength of a borrower's financial statement.
3. Loan money secured by chattel mortgages.
4. Make loans secured by shares of stock in firms other than the association.

*Stipulation Concerning Activities of Certain Savings and
5. Make loans secured by bills of lading.
Loan Associations*

6. Make loans secured by fungible goods.
7. Issue letters of credit.
8. Purchase or sell securities on the order of a customer.
9. Collect notes and drafts for customers.
10. Deal in any way in foreign exchange.
11. Maintain a safe deposit or safekeeping facilities.
12. Ship and receive securities for the account of customers.
13. Operate a trust department.
14. Act as a transfer agent.
15. Act as a registrar.
16. Act as a dividend disbursing agent.
17. Act as a coupon paying agent.
18. Act as a trustee for issues of securities.
19. Accept deposits.
20. Make oil loans.
21. Act as escrow agent.
22. Make loans secured by insurance policies.
23. Make loans secured by livestock.

The stipulation concerning the above facts is limited to
the calendar year 1952.

BUTLER, RAMAN, LONG, GUST & KENNEDY

By _____

PAUL L. ADAMS, Attorney General

T. CARL HOLBROOK

WILLIAM B. BEXTER

Assistant Attorney General

By _____

William B. Bexter

Assistant Attorney General

For Defendants:

State Capitol

Lansing, Michigan

TRANSCRIPT OF RECORD

OFFICE COPY

VOLUME IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 155

MICHIGAN NATIONAL BANK, ET AL.,
APPELLANTS,

vs.

MICHIGAN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

FILED JUNE 17, 1960

PROBABLE JURISDICTION NOTED OCTOBER 10, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 155

MICHIGAN NATIONAL BANK, ET AL.,
APPELLANTS,

vs.

MICHIGAN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

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[fol. 1296]

**IN THE SUPREME COURT OF THE STATE OF
MICHIGAN**

Appeal From the Court of Claims

Honorable Fred N. Searl, Circuit Judge,
Acting Judge of the Court of Claims

No. 48,138

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States, Plaintiff and Appellant,
NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN, COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States, Intervening Plaintiffs,

v.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE, Defendants and Appellees.

Appellees' Appendix

APPELLEES' EXHIBIT 204B

Investment of \$100.00 in Michigan National Bank Common Stock (par value—\$10.00) at high of market in 1941 (17), showing increase in value, stock dividends, and cash dividends paid.

[fol. 1297]

Year	Beginning Shares	Stock Dividend	Ending Shares	Market Value*	Cash Dividend
1941	5.88	—	5.88	\$100.00	\$ 2.94
1942	5.88	—	5.88	117.60	5.88
1943	5.88	—	5.88	170.52	5.88
1944	5.88	2.00	7.88	244.28	7.88
1945	7.88	—	7.88	346.72	7.88
1946	7.88	1.97	9.85	374.30	9.85
1947	9.85	1.97	11.82	390.06	11.82
1948	11.82	—	11.82	413.70	11.82
1949	11.82	3.93	15.75	378.00	15.75
1950	15.75	—	15.75	567.00	15.75
1951	15.75	—	15.75	630.00	15.75
1952	15.75	—	19.68	669.12	19.68
Total Cash Dividend					\$130.88

*Lowest Quote during year except beginning purchase at highest quote.

Data From Exhibit 204.

[fol. 1298]

STATEMENT OF POSITION

BUTZEL, EAMAN, LONG, GUST AND KENNEDY

1881 National Bank Building

Detroit 26

January 6, 1956

Honorable Fred N. Searl
Circuit Judge
Seventeenth Judicial Circuit
Grand Rapids, Michigan

Re: Michigan National Bank vs. Department of Revenue
Court of Claims No. 473

Dear Judge Searl:

At our pre-trial conference with you on December 13, 1955, we agreed to furnish you with a statement of our position in the above entitled cause in order that you might be informed more fully as to the nature of the case and hence better able to deal with such objections and issues as might arise in the course of our pre-trial proceedings. Accordingly, we submit the following statement. It is, of course, tentative in nature in many respects as I am sure you will appreciate. The factual development of the case may of necessity alter some of the positions advanced. Nor does it represent an exhaustive analysis of the many cases on the subject. We do think that it will be of assistance to you, however, in the connection in which you requested it.

[fol. 1299] *The Michigan Intangibles Tax:*

Prior to 1952, national bank shares were taxed at the same rate as all other intangibles, i.e., if income producing at the rate of 3% of dividends paid, or 1/10 of 1% of the par or contributed value of such shares whichever was the greater, and if non-income producing, at the rate of 1/10 of 1% of the par or contributed value of such shares (CL '48, Sec. 205.132). Taxation of bank

shares differed from other intangibles only in respect of the fact that the banks were (and still are) required to pay the tax on their shares (CL '48, Sec. 205.136), whereas shareholders in all other corporations paid their tax individually, subject to a \$20.00 exemption, a benefit not extended to the bank shareholders. Also the tax on bank shares was levied irrespective of the "situs" of the shares and the residence of the shareholder, whereas other intangibles were taxed only if they had a "situs" in Michigan.

However, in 1952, the Michigan legislature undertook to place bank shares in a special and more heavily taxed category. By Act 182 of the Public Acts of 1952 (5A CL '48 Sec. 205.132a, 1952 Supp.) an abortive effort was made by the legislature to impose a tax (in addition to the normal tax) of 4 mills on the "book value" of bank shares. This was so patently contrary to the federal statute granting permission to the various states to tax national bank shares that the legislature repealed the Act before such a tax was ever required to be paid under it.

But, the legislature did not abandon its attempt to place bank shares in a special category. In place of Act 182 was substituted Act 9 of the Public Acts of 1953 (5A CL '48 Sec. 205.132a, 1954 Supp.).

[fol. 1300] This is the amendment with which we are presently concerned. By this Act there is levied upon each resident or non-resident owner of stock of state and national banks and trust companies, whether income producing or not, a tax of $5\frac{1}{2}$ mills based on the "capital account" of the bank or trust company which is defined as the common capital, surplus and undivided profits of each bank or trust company as shown on its latest annual report for each year. This new tax is in lieu of the normal tax theretofore paid. Just as definitely as was the case with the abortive Act of 1952 bank shareholders are singled out by this new Act for special treatment and a larger intangibles tax is demanded of them than of any other intangible owner. In essence, though not labelled as such, it is a franchise tax collected from and paid by each bank on its

MICRO CARD

TRADE MARK



22

597



60



capital. (Comparably speaking, general commercial corporations were in 1952 paying a franchise tax of 4 mills on their capital). Of course, it could not be labelled a franchise tax because the State may not tax a national bank as a federal agency for the privilege of doing business in Michigan. *Owensboro National Bank vs. Owensboro* (1898), 173 U.S. 664. The question presented is whether this levy is valid.

R.S. 5219:

If this Act is invalid in its application to national bank shares it is because it is contrary to the federal statute which grants permission to the states to tax such shares (R.S. 5219, 12 USCA, Sec. 548). It has long been recognized that a state has no power to tax the national banks or their shares except as Congress gives them that power. *People vs. Weaver*, (1879), 100 U.S. 539, 543-4. As early as 1865, Congress did give the states the power to tax [fol. 1304] national bank shares. R.S. 5219 grants that power and in its present form, at least for our purposes, this statute is substantially similar to its predecessors. It not only "prescribes the full measure of the several states to impose taxes upon national banking associations or their stockholders", but "Any assessment not in conformity therewith is unauthorized and invalid." *First National Bank of Gulfport vs. Adams* (1922), 258 U.S. 362, 364-5.

The requirement of R.S. 5219 which in our opinion is violated by the Michigan Tax under consideration is the following:

" * * * the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section." (emphasis ours)

In reaching the opinion that the above requirement has been violated in this instance, it was necessary to review the numerous decisions of the United States Supreme Court bearing upon the question of what constitutes discrimination. No effort will be made in this opinion letter to cite all of these cases. To do so would unduly prolong it. However, it is deemed necessary to an understanding of the issues involved that a few of the more important principles established by the decisions be reviewed.

[fol. 1302] The major issue may, of course, be simply stated, that is, whether national bank shares have been taxed in Michigan at a greater rate than other forms of competitive moneyed capital in the hands of individuals. But as is often the case with terms apparently simple on their face, there has been much litigation as to their meaning. Most of this litigation has centered about the meaning of the term "other moneyed capital" and the scope of the term " * * * coming into competition with the business of national banks." Because of the almost endless controversy over these terms and their importance in this case, we will consider at this point what has been established by the decisions.

What is "other moneyed capital"?

By a process of inclusion, exclusion and general definition the United States Supreme Court has over the years given this term a somewhat special meaning. It is definitely broader than "moneyed capital" invested in state banks and trust companies and simply because those institutions or their shares are similarly taxed will not satisfy the requirements of R.S. 5219. *Merchants National Bank of Richmond vs. City of Richmond* (1921), 256 U.S. 625. Credits, money loaned at interest, and demands against persons or corporations "are moneyed capital." *Escanville Bank vs. Britton* (1881), 105 U.S. 322, 323-4. Also "mortgages, judgments, recognizances and money due upon agreement for the sale of real estate." *Boyer vs. Boyer* (1885), 113 U.S. 689, 702. The term broadly includes shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on

the business is money, where the object of the business is the making of profit by its use as money, and where the [fol. 1303] capital thus employed is invested for that purpose in securities by way of loan, discount or otherwise, which are from time to time according to the rules of business reduced again to money and reinvested. *Mercantile Bank vs. New York* (1887), 121 U.S. 138, 157. The term by definition also includes money in the hands of individuals (in addition to stock interests) employed in a similar way, i.e. invested in loans, or in securities for the payment of money. Thus, chattel and real estate mortgages taken as security for loans, notes, receivables, land contracts, deposits and loans of all sorts are representative of the term "moneyed capital." *First National Bank of Guthrie Center vs. Anderson* (1923) U. S. 341.

The term does not include "moneyed capital" in the hands of corporations but only in the hands of individual citizens, although shares in corporations engaged in the finance or investment business constitute "moneyed capital" in the hands of individuals. *National Bank of Wellington vs. Chapman* (1899), 173 U.S. 205, 214. Nor does it include shares of stock or other interests in general commercial corporations, such as mining, manufacturing or railroad companies, even though the shares of stock in such companies represent an interest in the corporation expressed in money value which may be sold, exchanged or traded in. *Mercantile Bank vs. New York*, cited 155.

Summarizing, shares of stock or other interests in financial institutions whose business is money constitute "moneyed capital." *Talbott vs. Silver Bow County* (1891), 139 U.S. 438, 448. The term accordingly does cover the interests, stock or otherwise, of individuals in banks, trust companies, insurance companies, finance companies, mortgage companies, small loan companies, building and loan [fol. 1304] and savings and loan companies, savings banks, credit unions, investment companies, and the like. Credits in the hands of individual citizens, such as bonds, notes, receivables, mortgages, land contracts, deposits and the like are also "moneyed capital." *Merchants National Bank vs. Richmond*, 256 U.S. 635, 639, subject, however, to the

proviso that such of the above as represent merely personal investments not made in competition with the banking business are not "moneyed capital." *First National Bank of Guthrie Center vs. Anderson*, cited, 350.

What is moneyed capital "coming into competition with the business of national banks"?

Having answered the question of what constitutes "moneyed capital", it is then necessary to determine the scope of the further limitation as to what part of that "moneyed capital" is in competition with the banking business. In this the Court recognizes the question to be a mixed one of law and fact. Further complicating the problem is the fact that prior decisions are in some respect of little value. This is so because competition is a dynamic concept and changes in methods of doing business since the federal statute was first enacted in 1864 have substantially altered the meaning of the term "competition" as regards both banks and their "competitors" in the money market. *First National Bank of Guthrie Center vs. Anderson*, cited, 353-4; *First National Bank vs. Hartford* (1927), 273 U.S. 548. This is perhaps most apparent in the changes which have occurred in the field of real estate mortgages and installment paper where banks, finance companies and building and loan associations are presently in sharp competition in contrast to the situation a relatively short time ago when [fol. 1305] no such competition existed. Changes in the way of doing business by other institutions have definitely brought them into competition with the banks where in the past they were not.

In this sense decisions made many years ago when this was not a fact are of little value. "Competition" must be assessed in the light of to-day's and not yesterday's business.

However, certain special principles have been established by the Court which are essential to an understanding of the term "competition". It is not necessary that the individual, firm or company conduct a business identical in all respects to the banking business. The restriction

applies as well where the competition exists only with respect to certain phases of the business of national banks as where "moneyed capital" is employed substantially as in the loan and investment features of banking. Competition in the sense intended by the statute arises not from the character of the business of those who compete, but from the manner of the employment of the capital at their command. *First National Bank vs. Hartford*, cited; *Minnesota vs. First National Bank of St. Paul* (1927), 273 U.S. 561; *Public National Bank of New York vs. Keating* (1931), 47 E. 2d 561, 564, affirmed per curiam 284 U.S. 587.

There must, however, be actual competition. *First National Bank of Shreveport vs. Louisiana Tax Commission* (1933), 289 U.S. 60. It is necessary to show not only that the bank and its alleged competitor were authorized by law to engage in a competitive line of business, but that moneys of both were actually employed in substantial amount in some line of business carried on by the less [fol. 1306] heavily taxed non-banking concern. It is not necessary to show that they solicit the same customers for the same loans or investments. It is enough if both engage in seeking and securing in the same locality capital investments substantial in amount and of the same class. *First National Bank vs. Hartford*, cited.

Applying these legal principles to the present money market it would seem inescapable that there is not only a large amount of "moneyed capital" in Michigan but that a substantial part of it is in competition with the national banks as they are presently operated. Such competition arises not from the character of the business of those who compete (which is not decisive) but from the manner of the employment of their capital (which is decisive). In the case of all of these competitors the capital which they employ in their business is money and the object of that business is the making a profit by its use as money. They are within the classic definition of the statutory terms. Such institutions as state banks and trust companies, finance companies, small loan companies, building and loan and savings and loan associations, insurance companies, real estate and mortgage companies, as well

as individuals similarly engaged, would clearly fall in this category. Such concerns compete with the banks not only in the investment phase of their business, but some, in addition, compete in a very material way with the banks for the latter's source of capital, i.e. depositors and shareholders, by diverting such capital to their own uses.

How is other moneyed capital taxed by the State of Michigan?

Granting such competition to exist the question remains is the tax on the bank shares discriminatory? To answer [fol. 1307] the question of discrimination it is necessary to consider the impact of all state taxes, not simply the intangible tax. The latter tax is discriminatory on its face but other taxes not imposed on banks but paid by competing capital may offset this inequity. In this connection, it may be said at the outset that the Michigan tax structure is such that comparison in many cases is impossible. For instance, a tax based on income cannot be equated to an ad valorem tax. It is, therefore, doubtful whether such a tax based solely on income or earnings can offset a tax such as that imposed on bank shares which is based on capital.

State Banks and trust companies are taxed in the same manner as national banks and therefore need not be considered. In addition to the intangibles tax above described, an intangibles tax of $1/25$ of 1% is levied on bank deposits which the depositor is required to pay unless the bank "voluntarily elects to pay such tax on its total deposit liabilities." CL '48, Sec. 25.132. Banks also pay the normal real estate taxes on their lands and buildings. They are exempt from the payment of a franchise tax. CL '48, Sec. 450.304.

Building and Loan and Savings and Loan Associations. These associations pay only $1/25$ of 1% on their shares. CL '48, Sec. 205.132. They are exempt from any other intangibles tax. CL '48, Sec. 205.133(11). The domestic associations pay a franchise tax of $1/4$ mill upon each dollar of their paid-in capital and legal reserve. CL '48, Sec. 450.304a. The federal associations did not pay that tax

in 1952. They also pay the normal real estate taxes on their lands and buildings.

Individuals and Partners. This category of taxpayer would cover all phases of business where conducted other [fol. 1308] than in corporate form. Because of this, no franchise tax is involved. Mortgage and real estate companies, small loan companies and finance companies may be so conducted. In such case the individual or partnership pays only the normal intangibles tax of $3\frac{1}{2}\%$ of income or $1/10$ of 1% of face, pars or contributed value whichever is greater, and in the case of income producing accounts and notes receivable offset by accounts and notes payable, $1/25$ of 1% (5A CL '48, Sec. 205.132, 1952 Supp.).

Insurance Companies. These companies are exempt from the Intangibles Tax Act, CL '48, Sec. 205.133(9). Domestic companies, however, pay a franchise tax of 5 mills on paid-up capital, surplus and unassigned profits (with a maximum of \$50,000). CL '48, Sec. 505.1. Foreign life and casualty companies pay 2% of gross premiums written in Michigan and foreign fire, marine and auto companies 3% of gross premiums. CL '48, Sec. 512.17. They also pay the normal real estate taxes on their lands and buildings.

Credit Unions are wholly exempt from taxation. CL '48, Sec. 205.133(12a), Sec. 493.8.

Small Loan Companies. These companies whether operated by individuals or partners or in corporate form pay an annual license fee of \$150.00. CL '48, Sec. 493.8. If operated by individuals or partners the owners would also pay the normal intangibles tax, as do other individuals or partners, on their notes, accounts receivable and the like. CL '48, Sec. 205.132. In connection with accounts or notes receivable the taxpayer may also under certain circumstances offset accounts or notes payable. CL '48, Sec. 205.133. If operated in corporate form, the company would [fol. 1309] pay the corporation franchise tax and also an intangibles tax on its notes and accounts receivables as in the case of individuals or partners. In addition, stockholders of such companies, if residents, would pay the normal intangibles tax on their shares.

Corporations (including *finance* and *investment* companies) subject to the General Corporation Law pose a special problem. At first glance they would seem to be taxed at rates equal to or greater than the tax rate on national bank shares. But this is not necessarily so. In 1952 such corporations paid a tax of 4 mills on capital and surplus (as compared with $5\frac{1}{2}$ mills on the bank's "Capital Account"). CL '48, Sec. 40.304. In addition, their *resident* shareholders paid the normal intangibles tax, less the individual exemption of \$20.00. CL '48, Sec. 205.132. The corporation also paid an intangibles tax on its accounts and notes receivables but could offset notes and accounts payable where the latter were incurred or given in connection with the business from which the receivables were derived. The bank shareholder on the other hand has no \$20.00 deduction and is taxed whether he is a resident or non-resident of Michigan. The bank pays no tax on accounts and notes receivables, but it does pay $1/25$ of 1% on its deposits (accounts payable), a tax which other corporations are not required to pay. In many situations it would appear that the combined tax on banks or their shareholders of $5\frac{1}{2}$ mills on their capital account, plus $1/25$ of 1% on their deposits, might exceed the combined tax on a corporation and its resident shareholders as above described.

Conclusion:

From a review of the above it would appear that there is a substantial discrimination against national bank shares [fol. 1310] in favor of other types of moneyed capital in Michigan which come into competition with various phases of the banking business.

There is a clear discrimination in the case of *building and loan and savings and loan associations*, both federal and domestic. In 1952 there were 63 such institutions, 36 being federal and 27 state-chartered. Their combined assets totalled 534 million. Their competition with the banks in the mortgage field is substantial. The rate of tax as pointed out above is not comparable. Under such circumstances, the tax levied under Act 9 of 1953 would

appear to clearly violate R.S. 5219. *First National Bank of Hartford vs. Hartford* (1927), 273 U.S. 548; *National Bank of Commerce vs. King County* (1929), 153 Wash. 351, 280 Pac. 16; *Boise City National Bank vs. Ada County* (Dec. Ida 1931) 48 F. 2d 222; *Commercial National Bank vs. Custer County* (1927) 275 U.S. 502, rev'ing 76 Mont. 45, 246 Pac. 259. Changes in methods of doing business in the past twenty-five years on the part of both the banks and the associations clearly distinguish such prior decisions as *First National Bank of Shreveport vs. Louisiana Tax Comm.* (1933), 289 U.S. 60.

Insurance companies pose a slightly different problem. Domestic companies pay 5 mills on paid-up capital, surplus and unassigned funds, but there is a maximum tax of \$50,000. Thus, the maximum tax would be reached when such a company's capital, surplus and unassigned funds reached 10 million dollars. No such benefit is extended banks which may result in a substantial discrimination in many instances. The tax paid by foreign insurance companies is impossible to compare because the tax base (gross premiums written in Michigan) is completely unrelated to the capital value of their shares or their assets [fol. 1311] in Michigan. Due to that fact alone, the tax may be discriminatory. Such a company might have many millions of dollars loaned on Michigan property to Michigan residents and pay a relatively small tax because of the premiums earned here. The bank's competition with such companies comes in the loaning of money. The capital of both the bank and insurance company is money and the object of both is the making of a profit by the use of such capital by investing it by way of loan, discount or otherwise, which, when reduced again to money according to the rules of business, is reinvested. *First National Bank of Hartford vs. Hartford*, cited. It is recognized that there are prior decisions holding that the insurance companies are not competitors.

Mercantile Bank vs. New York, cited; *People vs. Commissioners* (1866), 71 U.S. 244. However, conditions have changed to such an extent over the years since these cases were decided that competition may now be found to exist

particularly in the mortgage market, where it did not before.

Individuals and Partnerships: When an individual or partnership engages in the business of investing and re-investing money in mortgages, land contracts or receivables there is a marked advantage over banking activities in the same field from the tax standpoint. Such credits in the hands of an individual or partnership are subject only to the normal intangibles tax which on its face is discriminatory when compared to the $5\frac{1}{2}$ mills the banks must pay.

Finance Companies are in substantial competition with banks today. Their franchise tax of 4 mills on capital is substantially less. The only question is whether this [fol. 1312] inequity is offset by other taxes paid by the companies or their stockholders. For the reason pointed out above, it is at least doubtful whether they are not favored over the banks.

It is our conclusion from the above that there is in Michigan a substantial amount of moneyed capital which is employed in competition with material phases of the national banking business, that the tax imposed by Act 9 of the Public Acts of 1953 represents a clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital so employed and that such a tax is a violation of both the letter and the spirit of the restrictions imposed by the federal statute.

Very truly yours

BUTZEL, EAMEN, LONG, GUST AND KENNEDY

U. S. SAVINGS, LOAN GROUPS TRIPLE ASSETS

(Detroit Free Press)

October 10, 1955

CHICAGO—Assets of savings and loan associations have more than trebled since World War II, according to United States Savings and Loan League.

Assets have doubled in the past five years, the League said, and in 1954 alone, increased by \$4,500,000,000, or 18.2 per cent. At the year's end they totaled \$31,500,000,000.

Savings associations now are receiving a larger share [fol. 1313] of the liquid savings of the American public than any other type of financial institution, the league said.

Total savings deposits at the end of last year were \$27,300,000,000, a gain of 20 per cent over the total at the start of the year.

Savings associations also are the biggest single source of home mortgage funds, the league said, currently financing 36 per cent of all home purchases each year.

ASSETS GAIN 17 PERCENT

(Lansing State Journal)

August 26, 1955

The assets of Michigan savings and loan associations have increased more than 17 percent, or more than 129 million dollars during the past year, the Michigan Savings and Loan League reported Friday.

The assets of the savings and loan associations totaled more than 865 million dollars as of June 30, the league said.

The report said the savings and loan associations are a major source of home financing in the state, with loans on homes of more than 706 million dollars outstanding.

The increase of more than 110 million dollars in savings and the addition of 88,900 new accounts brought the total number of savers in savings and loan associations to 437,833. Approximately 16 million dollars in dividends on [fol. 1314] savings accounts were distributed during the year.

The reserve and surplus position of the associations was described as the strongest in their history, now being 8.26 percent of savings.

HOME MORTGAGE LOANS RECORDED IN MICHIGAN — 1954

(Source — Savings and Loan Fact Book for 1955)

Individuals and Others	\$320,254,000
Banks	249,093,000
Savings and Loans	211,454,000
Insurance Companies	102,942,000
Total	\$883,743,000

[fol. 1315]

LETTER LIMITING ISSUES

BUTZEL, EAMEN, LONG, GUST & KENNEDY
1881 National Bank Building
Detroit 26,

December 10, 1957

Honorable Fred M. Searl,
Circuit Judge,
Seventeenth Judicial Circuit,
Grand Rapids, Michigan.

Re: Michigan National Bank vs. Dept. of Revenue
Court of Claims No. 473

Dear Judge Searl:

We are in receipt of your letter of December 9, 1957, and wish to apologize for not having advised you previously of the status of this case.

• Since our last meeting we have been involved in a number of matters which in our view have materially simplified the issues and shortened the period of time which we anticipated the trial would take. We have reviewed under the Order of Discovery the tax returns of a number of institutions and individuals including those of insurance companies, credit unions, small loan companies, corporations, including finance and investment companies, as well as those of building and loan associations.

We have also been engaged in a review of the business activities of these various types of institutions and individuals.

[fol. 1316] As a result of this review, which has taken several months, we have reached the conclusion that we will confine our case to the competition which national banks face in this State with building and loan associations, both state and federal. In this connection we have already taken depositions of several federal savings and loan associations and have already scheduled depositions from certain state associations, one of which we will take this Friday.

We have also been in the process of preparing certain request for admission and interrogatories under the court rules, which we believe will greatly expedite the trial of this case if the Court orders that we are entitled to this type of discovery. With the conclusion of the depositions of the state associations and the interrogatories and request for admissions above mentioned, we believe that discovery will be substantially concluded so far as the plaintiff, Michigan National Bank, is concerned.

However, in view of the State's attitude towards the intervening plaintiffs, they must also, in our opinion, be given the opportunity to prove their competitive situation. To that end, we some time ago wrote each of the intervenors advising them of this fact. It has not yet been decided by them whether proof of their situation will be by deposition or testimony at the trial. This feature of the case I might add has considerably complicated our proceeding in that the intervenors are widely spread throughout the State and it has been necessary to deal with them primarily by correspondence.

It would be my feeling that if that when our depositions are completed and if we can secure the discovery which we believe we are entitled to by our request for admissions [fol. 1317] and interrogatories, that the case might be tried some time during the spring of 1958.

I am sure that you will appreciate that this has been a most difficult and complex case, further complicated by

the number of institutions involved. We feel that we have made real progress toward simplifying the issues and shortening the time of trial. If there is any further information which you desire, we will be more than happy to furnish it.

Very truly yours,

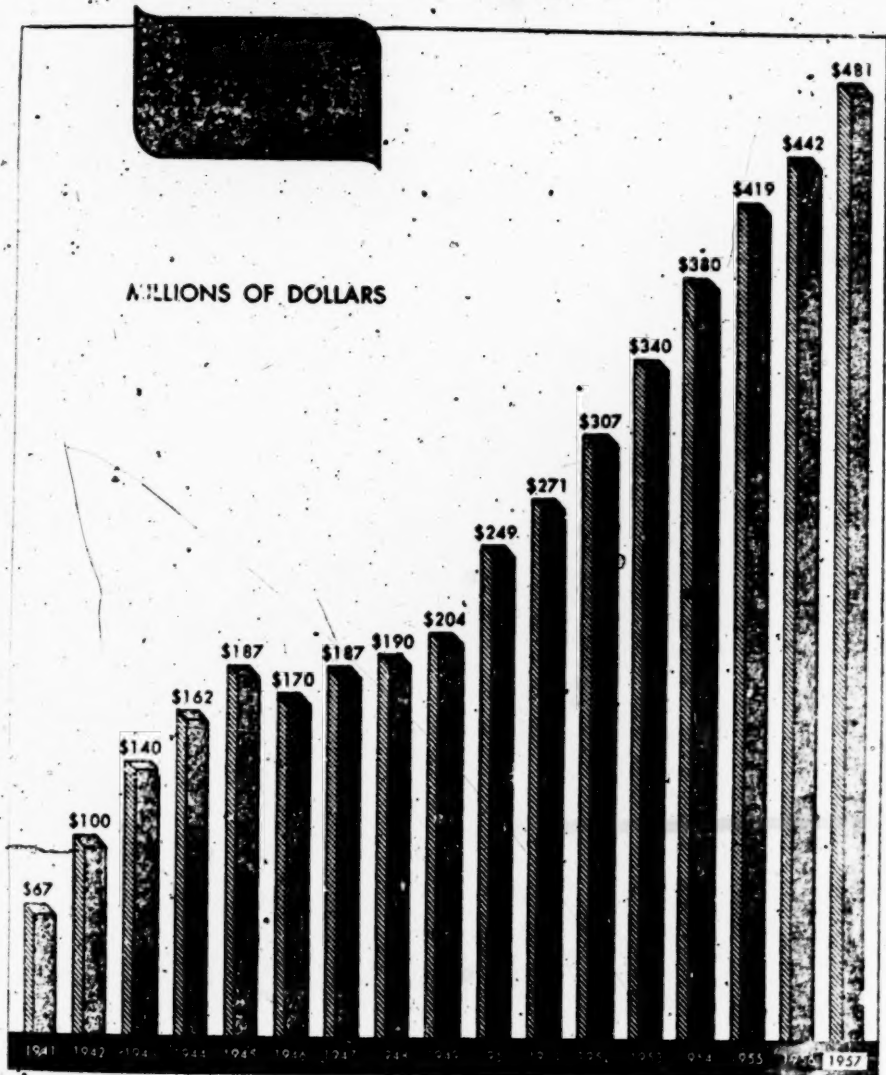
/s/ PHILIP T. VANZILE

38/ra

cc: Mr. William D. Dexter,
Assistant Attorney General,
300 Tussing Building,
Lansing, Michigan.

[fol. 1318]

APPELLEES' EXHIBIT 203-B



THIS FOLDER prepared by the Michigan Bankers Association makes clear the distinction between Banks and Savings and Loan Associations.

It is *factual*, not critical.

Many Associations have the appearance of Banks. As a result their true purpose is often misunderstood.

This confusion can be unfortunate for everyone concerned — Savings and Loan Associations, Banks and the public.



CHAMBERLAIN BANK ASSOCIATION

facts

about

the

DIFFERENCE

between

BANKS

and

Savings & Loan Associations

[fol. 1320]

Question Is there a difference between a Bank and a Savings and Loan Association?

Answer Yes, there is a very definite difference. A Savings and Loan Association is not a Bank. Michigan banks accept *deposits*. Savings and Loan Associations operating in Michigan accept *investment* in shares or share accounts. Bank depositors are *creditors*. Association members are *shareholders*.

Question What is the difference between interest paid on Bank savings accounts and dividends paid on Savings and Loan Association shares?

Answer Banks are required to declare in advance what interest rates they will pay. This *interest* is a *guaranteed* return on Bank savings accounts. Associations pay dividends on a "when and if declared" basis. When Associations advertise a certain percentage return, they are actually saying, "We paid this dividend for the past period, and we expect to pay it for the next."

Question How do Banks and Savings and Loan Associations differ on withdrawals?

Answer As creditors, Bank depositors make withdrawal requests to obtain repayment of their savings; as investors, Association members actually *apply for repurchase* of shares by Associations.

Banks, in most instances, pay withdrawal requests upon demand, and in all cases without extended delay. If Michigan banks request a delay as provided in their deposit contract, *they must pay all withdrawals for the full amount* at the expiration of the delay period. Otherwise, the Federal Deposit Insurance Corporation steps into member banks and makes depositor's funds available promptly.

Associations are not required to repurchase members' shares until 30 days after demand. If unable to repurchase at the end of 30 days, they may put all requests on a "take your turn" plan. Under this plan all withdrawals are filed and paid

in numerical order. If the value of a member's share is more than \$1,000.00, he may be paid \$1,000.00, if available, when his number is reached. The application is then renumbered and placed at the bottom of the list. When his number is again reached, the process is repeated. Associations must apply a minimum of either one-third or 80% (depending on how chartered) of their receipts to repurchase members' shares.

Question What difference is there in the liquidity of Banks and Savings and Loans Associations?

Answer Banks, because they must meet depositors' demands without extended delay, maintain much larger liquid reserves than do Associations. More than one-half of the total deposits of all Banks are in cash or United States Government securities. Savings and Loan Associations can not guarantee to pay on demand all requests for withdrawal of funds. Nearly all of the funds of members of Associations are loaned out with long term mortgages as security.

Question What is the difference between the Federal Deposit Insurance Corporation (FDIC) and the Federal Savings and Loan Insurance Corporation (FSLIC)?

Answer The Federal Deposit Insurance Corporation which insures Bank deposits, and the Federal Savings and Loan Insurance Corporation are both agencies of the United States Government. However, *the time when the legal obligation to pay becomes effective is not the same under the two agencies.*

If insured banks are unable to meet the demands of their depositors, they will be closed and the Federal Deposit Insurance Corporation will make depositors' funds available promptly. If Associations are not able to repurchase members' shares, they can invoke their "take your turn" charter provision.

Only after insured Associations are finally declared "in default" is FSLIC legally obligated to pay. An Association is not "in default" so long as it applies a stipulated percentage of its receipts to the repurchase of share accounts in numerical order.

APPELLEES' EXHIBIT 202

MICHIGAN NATIONAL BANK

(000.00 omitted)

STATEMENT OF CONDITION—December 31st

RESOURCES	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950
Cash	24,323	34,689	26,101	25,551	28,581	31,420	33,590	33,617	27,249	34,243
U.S. Sec.	14,022	36,040	78,251	98,422	113,199	68,011	70,767	66,651	77,694	84,743
Cash & Sec.	39,345	70,729	104,352	123,973	141,780	99,431	104,457	100,268	104,943	118,986
Oth. Sec.	2,452	515	252	165	165	180	253	210	270	270
Lo.—Gen.	7,777	9,550	11,219	13,611	13,804	21,549	22,239	22,545	20,422	24,153
Lo.—FHA Mt.	7,564	8,870	14,428	14,513	16,911	15,461	545,246	16,523	19,180	23,976
Lo.—Oth. Mt.	5,634	6,051	5,915	6,062	7,985	22,289	30,220	32,925	33,601	33,631
Lo.—Inst.	2,985	2,379	1,864	2,565	4,708	9,861	12,832	15,147	23,814	44,832
Total Lo.	23,960	26,850	33,426	36,741	43,108	69,160	80,537	87,140	96,417	126,592
Bk. Bldg.	1,496	1,518	1,451	1,406	1,379	1,479	1,717	2,347	2,776	2,714
Fu. & Equip.	184	258	248	251	274	225	450	637	693	688
Ac. In. Rec.	152	173	226	322	476	331	425	446	488	496
Oth. Assets	106	123	312	262	407	394	353	245	332	706
Oth. Ass.	1,938	2,072	2,237	2,241	2,535	2,529	2,945	3,675	4,289	4,604
Total Res.	67,601	100,166	140,267	163,120	187,588	171,300	188,222	191,293	205,659	250,452
LIABILITIES										
Fed. Fds.	118	4,732	23,986	34,119	40,451	7,888	2,955	5,899	6,729	6,985
St. Fds.	1,336	1,373	965	96	1,061	1,185	988	1,065	842	1,026
Co. Fds.	1,015	1,566	1,061	1,111	876	1,147	981	924	1,286	1,297
Civ. Fds.	3,148	3,546	3,767	3,636	4,049	7,042	5,700	6,464	5,191	7,756
Oth. Fds. Fds.	970	1,232	1,234	2,512	2,975	2,242	3,662	3,212	2,888	3,616
Pub. Fds.	6,587	12,449	31,042	41,666	48,542	19,504	13,666	17,594	16,936	20,590
Cash. Cks.	615	1,137	908	1,232	1,372	1,591	1,915	1,684	1,409	2,168
Tr. Fds.	1,220	2,102	1,735	1,641	1,773	2,198	1,950	1,845	1,902	3,250
Due Bkcs.	1,784	2,658	2,523	2,775	2,598	2,729	2,216	2,203	2,083	2,746
Comit. Dep.	28,441	48,249	63,253	63,592	68,215	72,135	83,108	80,522	85,838	108,184
Cuml. Dep.	38,647	66,890	99,461	110,907	122,500	98,457	102,875	103,798	108,168	136,938
Club Dep.	62	65	80	100	105	123	158	182	203	225
Time Cert.	4,943	768	822	1,310	1,537	1,745	2,041	6,000	14,250	22,139
Sav. Dep.	21,931	28,443	33,235	43,279	55,435	61,559	72,247	69,093	68,966	72,054
Sav. Dep.	23,036	27,276	34,137	44,689	57,077	63,427	74,436	75,285	83,419	94,418
Total Dep.	61,683	94,166	133,588	155,596	179,577	161,584	177,311	179,083	191,587	231,356
Ac. Bld. Am.	37	60	182	330	521	633	756	974	1,207	1,387
Ac. Div. Pfd.	20	19	19	19	13	13	15	15	15	15
Ac. Fed. Td.	90	80	215	330	320	576	408	531	462	1,017
Ac. Int. & Ex.	43	37	45	55	65	93	144	117	319	616
Unearn. Inc.	231	203	166	185	348	641	837	1,053	1,994	3,965
Oth. Liab.	1	1	1	1	66	80	222	126	133	273
Total O. L.	442	400	628	920	1,333	2,638	2,400	2,795	4,120	7,273
Pfd. St.	1,990	1,500	1,500	1,500	4,000	1,000	1,000	1,000	1,000	1,000
Com. St.	1,500	1,500	1,500	2,000	2,000	2,500	3,000	3,000	4,000	4,000
Surplus	1,500	2,000	2,000	2,000	2,500	2,500	3,000	3,000	4,000	4,000
Pr. & Res.	876	600	1,941	1,104	1,178	1,678	1,511	2,415	1,252	2,823
Cap. Fds.	5,478	5,600	6,041	6,604	6,678	7,678	8,511	9,415	10,252	11,823
Total Liab.	67,601	100,166	140,267	163,120	187,588	171,300	188,222	191,293	205,659	250,452

[fol. 1322]

MICHIGAN NATIONAL BANK

(000.00 omitted)

STATEMENT OF CONDITION—December 31st

RESOURCES	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960
Cash	40,305	46,162	52,398	48,985	53,294	60,539	60,480			
U. S. Secur.	93,181	109,140	122,261	139,727	132,521	135,219	138,834			
Other Secur.	270	300	330	390	390	887	1,731			
Cash & Secur.	133,756	155,602	174,989	189,102	186,005	196,645	201,154			
Loans—General	26,865	28,669	26,305	31,375	40,144	45,239	49,387			
Loans—FHA Mtg.	21,070	26,845	33,199	37,163	48,804	47,503	53,024			
Loans—Oth. Mtg.	33,374	34,852	34,183	39,120	44,240	46,834	54,730			
Loans—Instal.	52,623	57,809	66,959	75,589	90,801	96,775	111,963			
Total Loans	133,932	148,305	160,656	183,247	223,989	235,651	269,104			
Bank Bldgs.	2,895	2,993	3,079	4,651	5,997	6,581	6,645			
Furn. & Equip.	809	939	1,094	1,246	1,384	1,612	1,956			
Accr. Inc. Rec.	561	664	660	953	941	1,050	1,184			
Other Assets	0 537	645	1,022	1,108	958	949	981			
Other Assets	4,822	5,241	5,855	7,958	9,280	10,192	10,766			
Total Resour.	272,510	309,148	341,500	380,307	419,274	442,888	481,024			
LIABILITIES										
Federal Funds	6,299	9,083	8,681	8,179	7,040	6,190	7,787			
State Funds	796	668	662	802	1,219	1,236	2,309			
County Funds	1,414	1,787	1,483	1,537	1,429	1,298	1,517			
City Funds	7,184	6,337	7,033	6,785	9,175	6,790	6,882			
Oth. Pub. Funds	2,539	4,218	3,287	4,131	5,081	4,690	4,055			
Public Funds	18,122	22,093	21,146	21,434	23,944	20,204	22,550			
Cash, Checks	2,017	2,819	2,612	2,834	3,103	2,995	2,924			
Trust Funds	2,056	2,997	4,901	6,819	6,114	6,307	6,871			
Due to Banks	2,534	2,462	2,791	3,835	4,043	4,452	2,746			
Com'l Deps.	121,119	134,357	147,828	149,892	147,965	149,134	146,923			
Com'l Deps.	146,451	164,728	179,278	184,814	185,169	182,022	182,014			
Club Deposits	266	314	314	310	329	318	285			
Time Certif.	28,178	36,894	48,372	75,501	94,274	89,436	76,259			
Savgs. Deps.	74,514	80,681	86,452	88,424	101,248	128,992	176,180			
Savgs. Deps.	402,954	117,889	135,138	164,235	195,851	218,746	251,724			
Total Deps.	249,405	282,617	314,416	349,049	381,026	400,768	433,738			
Accs. Bd. Amor.	1,152	1,337	604	88	125	178	304			
Ac. Div. Pfd. St.	20									
Ac. Fed. Taxes	2,717	2,970	1,370	2,488	2,476	1,563	2,500			
Ac. Int. & Exp.	814	1,185	1,512	1,710	1,866	1,860	2,252			
Unearn. Inc.	5,441	6,713	7,417	8,552	12,061	14,137	15,737			
Other Liab.	144	295	18	49	356	28	3			
Other Liab.	9,718	11,600	10,921	12,721	16,634	17,410	20,188			
Pfd Stock	1,000	1,000	1,000	1,000	1,000	1,000	1,000			
Com. Stock	4,000	5,000	5,000	6,000	6,000	7,500	7,500			
Surplus	4,990	5,000	5,000	6,000	6,000	7,500	7,500			
Prof. & Res.	4,387	3,931	5,163	5,537	8,620	8,516	11,038			
Capital Funds	13,387	14,931	16,163	18,587	21,620	24,510	27,098			
Total Liab.	272,510	309,148	341,500	380,307	419,274	442,888	481,024			

1320

[fol. 1323]

APPELLEES' EXHIBIT 4-A-1

December 15, 1952

Comptroller of the Currency
Washington, D. C.

Dear Sir:

Confirming our discussion with Examiner Mooney, who attended our Board Meeting on November 14, 1952, we are attaching an analysis relative to the adequacy of the bank's capital funds; also copies of our correspondence relative to this matter and our requests for branch offices covering the period 1950-1952.

We anticipate the capital funds of the bank will be \$15,000,000 as of December 31, 1952, and the "risk assets" approximately \$100,000,000. This would be a ratio of 1 to 6.6, and compares with a ratio of 1 to 7.4 for the corresponding figure a year ago.

Very truly yours

H. J. Stoddard
President

HJS:M

[fol. 1324]

ANALYSIS—RE ADEQUACY OF CAPITAL FUNDS
SEPTEMBER 30, 1952

ASSETS	Book	Requiring Some Degree of Capital Protection
Cash	49,316,000	—
U. S. Securities	131,087,000	—
Federal Reserve Stock	300,000	—
General Loans	26,833,000	24,216,000(a)
Mortgage Loans—FHA	25,204,000	—
Mortgage Loans—GI	10,757,000	5,378,000(b)
Mortgage Loans—Other	23,833,000	23,833,000
Installment Loans—FHA		
Title I	8,100,000	5,719,000(c)
Installment Loans—Mobile		
Homes	25,959,000	19,409,000(d)
Installment Loans—Other	24,842,000	22,866,000(e)
Bank Buildings	3,008,000	3,008,000
Furniture and Equipment	924,000	924,000
Accrued Interest	859,000	309,000(f)
Other Assets	618,000	—
	<u>331,640,000</u>	<u>105,662,000</u>

NOTE:

(a) General Loans after deducting \$2,617,000 guaranteed by Federal Agencies.

(b) GI Mortgages after deducting 50% guaranteed by Federal Government.

(c) FHA Title I after deducting \$1,723,000 of Reserves and \$658,000 of interest collected but not earned.

[fol. 1325] (d) Mobile Home Loans after deducting \$3,000,000 of cash reserves and \$3,550,000 of interest collected but not earned.

(e) Other Instalment Loans after deducting \$1,976,000 of interest collected but not earned.

(f) Accrued Interest after deducting \$550,000 on U. S. Securities.

COMMENT

A 20 year survey covering the period 1932-51 was made by the Federal Reserve Bank, and shows losses of banks in the Seventh Federal Reserve District averaged .7% with a high of 6.5% in 1933. Applying this extreme depression rate against risk assets of \$105,662,000, would give a maximum potential loss of \$6,868,000.

As a protection to depositors against such a contingency, the bank has as of this date \$14,483,000 of capital funds. In addition, the bank has a carry back tax credit to absorb losses of \$2,320,000.

The bank is currently showing an operating profit before taxes of \$5,300,000 annually. This is approximately double the average rate for all national banks, as is the estimated earning retention of \$2,000,000 annually after Federal taxes and dividends.

The net losses sustained by the bank since it was organized on January 1, 1941 are but \$274,000.

CONCLUSION

The Comptroller of the Currency in his Annual Report to Congress for the year 1951 states that his office, in [fol. 1326] determining whether or not a national bank is undercapitalized, studies the capital structure in relation to:

- (1) volume and character of assets involving some risk element
- (2) volume of assets with credit weaknesses that are unwarranted or greater than normal
- (3) ability and general policies of management
- (4) past record of losses
- (5) earning capacity, record of earnings retention in the past and prospects for future retention of earnings
- (6) economic stability of the area in which the bank is located

An analysis of the Michigan National Bank, which is supported by the attached exhibit clearly indicates that the bank has adequate capital funds for the protection of its depositors, and there is no factual basis to support the position either that the risk assets should be reduced, or the capital funds increased other than through retention of earnings.

DETAILED ANALYSIS BASED ON FACTORS
USED BY COMPTROLLER'S OFFICE

(1) *Volume and Character of Assets Involving Some Risk Element*

The examiner's report of February 25, 1952 lists but \$1,563,153 or 0.55% of the bank's assets as "Loans Especially Mentioned". (The Bank so classified only \$111,105). On September 30, 83% of the bank's loans were on a monthly payment basis, and delinquencies of 30 days or [fol.1327] more were but 1.17%, a very low ratio which indicates excellence in quality of loans. The percentage of monthly amortized loans is undoubtedly one of the highest of all banks. Experience has demonstrated that the safest bank loans are those on a monthly amortized basis.

(2) *Volume of Assets with Credit Weaknesses that are Unwarranted or Greater Than Normal*

The examiner's report of February 25, 1952 lists but \$708,806 or 0.38% of the bank's assets as "Substandard." The bank so classified only \$194,190).

(3) *Ability and General Policies of Management*

The bank's growth from resources of \$57,456,705 on January 1, 1941 to \$301,640,000 as of September 30, 1952, exclusive of Bills Payable, indicates satisfactory management and policies. In addition to the Central Board of Directors of 25 individuals, the bank's activities are also under the constant scrutiny of seven Local Boards comprising 68 active business men.

(4) *Past Record of Losses*

During the 12 year period, loans have been made in excess of 1 billion dollars and net losses to date are but \$273,945 or 0.03%: (See schedule attached).

(5) *Earning Capacity, Record of Earnings Retention in the Past and Prospects of Future Retention of Earnings*

The bank's record during the past 12 years is as follows:

[fol. 1328]

Earnings from Operations	\$22,585,620.75
Federal Income Taxes Paid and Accrued	8,758,359.69
Net Income	13,827,261.06
Dividends—Preferred Stock	437,594.04
—Common Stock	3,200,000.00
	3,637,594.04
Earnings Retained in the Business	10,189,667.02
Retirement—Preferred Stock	634,000.00
Net Increase in Capital Funds	\$ 9,555,667.02
Capital Funds—January 1, 1941	5,134,000.00
—October 31, 1952	14,689,667.02
Net Increase in Capital Funds	\$ 9,555,667.02

This record, so far as we have been able to determine, is unsurpassed by any national bank of similar size in the country. We anticipate future retention of earnings will continue on approximately the same basis as in the past.

(6) *Economic Stability of the Area in Which the Bank is Located*

The location of the banking offices in seven Michigan cities with a diversification of automobile manufacturing, chemicals, furniture, cereals, shipping, agriculture, state capital and trading centers, represents one of the most stable areas in the United States today.

[fol. 1329]

ANALYSIS—RE ADEQUACY OF CAPITAL FUNDS
DECEMBER 31, 1952

ASSETS	Book	Requiring Some Degree of Capital Protection
Cash	46,162,000	—
U. S. Securities	109,140,000	—
Federal Reserve Stock	300,000	—
General Loans	28,699,000	25,974,000(a)
Mortgage Loans—FHA	26,945,000	—
Mortgage Loans—GI	10,512,000	5,256,000(b)
Mortgage Loans—Other	24,340,000	24,340,000
Installment Loans—FHA		
Title I	8,317,000	6,657,000(c)
Installment Loans—Mobile		
Homes	22,689,000	16,789,000(d)
Installment Loans—Other	26,803,000	24,590,000(e)
Bank Buildings	2,993,000	2,993,000
Furniture and Equipment	939,000	939,000
Accrued Interest	664,000	271,000(f)
Other Assets	645,000	—
	<u>309,148,000</u>	<u>107,809,000</u>

NOTE:

- (a) General Loans after deducting \$2,725,000 guaranteed by Federal Agencies.
- (b) GI Mortgages after deducting 50% guaranteed by Federal Government.
- (c) FHA Title I after deducting \$960,000 of Reserves and \$700,000 of interest collected but not earned.
- [fol. 1330] (d) Mobile Home loans after deducting \$2,700,000 of cash reserves and \$3,200,000 of interest collected but not earned.
- (e) Other Installment Loans after deducting \$2,213,000 of interest collected but not earned.
- (f) Accrued Interest after deducting \$393,000 on U. S. Securities.

12-31-51 12-31-52

Ratio of Capital Funds to Risk Assets 1 to 7.4 1 to 7.2

[fol. 1331]

December 17, 1952

Mr. H. J. Chalfont, Vice President
Federal Reserve Bank of Chicago
Detroit, Michigan

Dear Harlan:

Responsive to our recent telephone conversation, the Board of Directors of this bank has for the past several months given serious consideration to the question of continuing our borrowings from the Federal Reserve Bank on Bills Payable, or selling \$20,000,000 on long term Government bonds.

This bank unfortunately will pay substantial excess profits tax this year. We could sell our long term Government bonds and our loss would be but 18%, with the balance of 82% as a reduction in our Federal taxes. We have been reluctant to take this action, however, as our bank since 1941 has never speculated in Government bonds, but purchased them solely on an investment basis. We have developed a staggered maturity portfolio, as shown by the attached statement, and it is our feeling that were other banks to follow a similar policy, the handling of the large Government debt by the Treasury would be greatly simplified. We have therefore concluded not to sell our long term Government bonds unless you wished us to discontinue our borrowings with your bank.

Although we have had a substantial deposit increase during the last 12 months, our loan account has likewise shown a marked increase. However, the Comptroller of the [fol. 1332] Currency is vigorously urging either that we increase our capital funds by the sale of new stock, or reduce our loans. We have decided against the first alternative, but to hold our loans at about the present level. Inasmuch as almost 1/3 of them constitute a non-risk type, we feel that the capital funds of \$15,000,000 in relation to risk assets of \$100,000,000 is not out of line.

Our present purpose, therefore, would be to hold our loans and investments at the present level, not sell our

long term Government bonds, and with the present trend should be able to retire our Bills Payable from increased deposits during 1953. If our deposits should not increase, we would still have some expiration of early maturities to accomplish the same result.

Cordially yours

H. J. Stoddard
President

December 19, 1950

Mr. R. N. Mackey
National Bank Examiner
164 West Jackson Blvd., Room 725
Chicago 4, Illinois

Dear Mr. Mackey:

Confirming the discussion of the Board of Directors meeting of the bank which you attended on Friday, December 15, it was the unanimous opinion of the Board, all of whom with one exception were present, that they would not [fol. 1333] recommend to the shareholders the sale of additional common stock, for the following reasons:

1. Our ratio of capital funds to deposits is equal to the average of all Michigan banks.
2. Our ratio of capital funds to loans is comparable to the national average if all of our Government guaranteed loans are excluded and allowance made for actual cash reserves. The computation should also include corporate and municipal bonds in the national average.
3. Our capital funds for the past ten years have been increasing at almost double the national rate, due to the bank's larger earnings, and also the fact that $\frac{2}{3}$ of the profits have been retained in the business.
4. Our net losses for ten years are but 240 thousand dollars on loans made in excess of 720 million, or only 3 hundredths of 1%.

5. The last report of examination shows a substandard classification of 8/10 of 1%. Our own analysis, after reviewing the report, gives a substandard classification of but 3/10 of 1%.
6. Almost 50% of the stock of this bank is owned by individuals in the highest tax bracket. A dividend of \$1.00 a share gives a return of but 3½% on a book value of \$30.00. The larger shareholders would thus be paying 80-90% of the dividend in Federal [fol. 1334] taxes, and actually receiving a net of 3/10 to 4/10 of 1% on their investment at book value.

Very truly yours

H. J. Stoddard
President

HJS:M

[fol. 1335]

TESTIMONY OF RUSSELL FAIRLES

CROSS EXAMINATION OF RUSSELL FAIRLES

October 20, 1958

p. 1308: *—

Q. * * * do you know the approximate total assets of all financial institutions and individuals employing their capital in some phase of the business conducted by your bank in the area that it had operated in 1952?

A. No.

Q. Do you have any way of knowing the total moneys lent in this area in 1952?

A. For what purpose?

Q. For all purposes.

A. You mean all types of loans?

Q. Yes.

A. No, I have no idea.

* Refers to pages of original transcript.

p. 1309:—

Q. As I understand it, the bank did do business in counties other than those counties?

A. We did.

Q. And in fact you did business in the states other than Michigan?

A. All over the United States.

[fol. 1336] Q. All over the United States?

A. Yes.

The Court: Mr. Dexter, does that imply that you had asked him whether he did do any mortgage business outside of the State of Michigan, real estate mortgages? The question is rather general and I want to be sure.

By Mr. Dexter:

Q. You did not loan moneys secured by real estate located outside of the State of Michigan, did you?

A. We did.

Q. You did?

A. Yes, we did.

p. 1310:—

Q. All right. You have testified that the Comptroller was criticizing your concentration in trailer paper.

Mr. Klein: If the Court please, I haven't objected before but what bearing does that have on the competition between the Michigan National Bank and the building and loan associations in the areas in which they do business? It is beyond me. I have not objected to anything because I wanted the Court to have the facts but this has been repeated and has no bearing at all upon the issues before this Court in this case.

I object to it.

The Court: And to go back a little, I don't recall that he testified that the Comptroller as the head of the department [fol. 1337] ever criticized. I thought he said that the bank examiners that came criticized?

Am I wrong in my memory on that?

By Mr. Dexter:

Q. I believe there was actual correspondence between the Michigan National Bank and the Comptroller in this regard, regarding this concentration of trailer paper in 1952, was there not?

A. I imagine there was.

p. 1311:—

By Mr. Dexter:

Q. As relative to this, Mr. Fairles, did you borrow from the Federal Reserve System in 1952?

A. I have no record here. We buy and sell Federal funds all the time, and I don't know whether in 1952

p. 1312:—

we were selling all the time or whether we didn't buy or borrow.

Q. Did this problem that we have referred to with the comptroller of the currency have anything to do with the fact that you had borrowed \$30,000,000 from them in 1952?

A. No. That is just ordinary fluctuations. Sometimes we sell as much as 35 million in one day, and sometimes occasionally we borrow. Ordinarily we have it that we sell Federal funds much more than we borrow.

Q. I would like to show you correspondence in your [fol. 1338] monthly reports to directors in 1952 and ask you if that refreshes your memory in regard to the particular problem we are talking about?

A. They are letters between the bank and the Federal Reserve.

Q. What would those letters indicate that the problem was that they were concerned with?

A. They were concerned with the consistency apparently of the borrowing at that time.

Q. Would they be concerned also with that consistency as it related to the \$30,000,000 that they were owed at that time and the concentration of your assets?

A. No, they wouldn't.

Q. Now, I would like to read into the record and then show you a matter of December 15, 1952.

Mr. Klein: You want to mark it an exhibit?

p. 1313:—

Mr. Dexter: This is already marked, your Honor, Exhibit 4A-1, offered into evidence by the plaintiff, and we would withdraw any objection to the admissibility of this exhibit.

Mr. Klein: You mean to the whole exhibit, not just that one letter?

Mr. Dexter: Yes.

(Reading)

[fol. 1339] "Comptroller of the Currency
"Washington, D.C.

"Dear Sir:

"Confirming our discussion with Examiner Mooney who attended our board meeting on November 14, 1952, we are attaching an analysis relative to the adequacy of the bank's capital funds, also copies of our correspondence relative to this matter and our request for branch offices covering the period 1950-1952.

"We anticipate the capital funds of the bank will be \$15,000,000 as of December 31, 1952, and the 'risk assets' approximately \$100,000,000. This would be a ratio of one to 6.6, and compares with the ratio one to 7.4 for the corresponding figure a year ago."

Signed, "Very Truly Yours, H. J. Stoddard, President."

And part 1 on page 1 of the enclosure of that letter

p. 1314:—

is the following from a sheet entitled, "Analysis re Adequacy of Capital Funds September 30, 1952," and I read the paragraph on the bottom of that sheet:

"An analysis of the Michigan National Bank, which is supported by the attached exhibit, clearly indicates

that the bank has adequate capital funds for the protection of its depositors, and there is no factor basis to support the position either that the risk asset should be reduced, or the capital funds increased other than through retention of earnings."

[fol. 1340] The Court: Mr. Dexter, does the analysis there have a definition of what is meant by risk assets?

Mr. Dexter: Yes, your Honor.

The Court: It doesn't help me unless I know what they are talking about.

Mr. Dexter: (Examining exhibit) Apparently, your Honor, there is no definition of the term.

The Court: We don't know what they mean. Do we know what they are complaining about, whether they are having too many mortgages or not?

p. 1315:—

Mr. Dexter: I think that possibly, your Honor, the notes and the balance sheet or sheets submitted by the bank indicate generally what they were talking about, and there they have got a classification of their loans.

I think, your Honor, that this analysis sheet re adequacy of capital funds of September 30, 1952, and the detailed analysis based on factors used by the Comptroller's office indicate that the references are to the loan business of the bank as compared to the Governments and cash and etc. position.

Mr. Klein: That's your conclusion, isn't it?

Mr. Dexter: That's right. Now, I state that as a conclusion, Mr. Klein, and I will have those pages specifically reproduced and put in as part of the record.

[fol. 1341] The Court: I remember seeing that particular exhibit. Did that come in in connection with some deposition here sometime?

Mr. Dexter: Over at the—

The Court (interposing): In the Michigan National office?

Mr. Dexter: The building they tore down.

The Court: I see. Very well. I remember there were

a number of books that came in at that time. I remember they went back as far as No. 4.

Mr. Barbour: This was 4-A, wasn't it?

p. 1316:—

The Court: Yes, you are right. Exhibit 4-A, two bound volumes of records, two boxes of microfilm, and so forth. Very well.

Mr. Dexter: And I would like to draw the Court's attention to the fact, too, that the reference here indicates that the bank, by its own admission, says, "We have enough capital in 1952."

By Mr. Dexter:

Q. And I might ask Mr. Fairles, what is a good definition as a National bank of "risk assets"?

A. Well, we consider all assets risk assets in preparing these various schedules that are not either direct obligations of the U. S. Government or guaranteed by some instrumentality of the U. S. Government.

[fol. 1342] Q. So risk assets would include the conventional mortgage loans, for example?

A. It would.

Q. It would include the various installment paper that you have that was not guaranteed by the Government?

A. With the exception of FHA Title I improvement loans.

Q. Do you believe, Mr. Fairles, that the Comptroller, when he used the word "concentration," was talking about geographical concentration?

A. I think so.

Q. You mean he was talking about geographical concentration when he was talking about your bank's concentration in the trailer paper in 1952?

p. 1317:—

A. I believe so.

Q. Well, where was your trailer paper concentrated in 1952? Wasn't it all over the United States?

A. It was all over the United States.

Q. Well, how could that be a concentration in area, then?

A. That is what we argued with him, that it wasn't a concentration?

Q. But that was not his reference then, was it?

A. Well, he didn't have any basis of any kind of concentration at all, the way we figured it. There was not any concentration so far as the type of employment was concerned. There was not any concentration as far as area was concerned. There was not any concentration as far as level of income was concerned. So we feel that there was not any basis for any kind of a concentration at all.

Q. But his problem that he was confronting you with was concentration of the assets of the Michigan National in 1952 in trailer paper, wasn't it, Mr. Fairles?

A. That is what he said.

Q. That was his contention, so he meant that by "concentration"?

A. Well, I don't know that he ever defines what he means by "concentration" in any of the reports he has given us.

Q. But that was the fact of concentration in 1952, was the amount of your assets in trailer paper, right?

p. 1318:—

A. It may have been. I don't know what he is thinking.

Q. In any event, the bank did tell the Comptroller that they had enough capital in 1952, right?

A. That is right.

Q. And that was a true statement?

A. It was.

Michigan Supreme Court Opinion
358 Michigan 611
February 25, 1960

[614] KELLY, J. Plaintiff's action to recover a 1952 deficiency intangibles tax assessment in the amount of \$49,929.27 resulted in judgment of no cause of action.

This appeal presents the question of whether CLS 1956, § 205.132a (Stat Ann 1957 Cum Supp § 7.556 [2a]), imposing a tax on bank shares, is invalid because it violates section 5219 of the Revised Statutes of the United States (12 USCA, § 548).

In 1953 (PA 1953, No 9) the legislature amended the intangibles tax law so as to place both State and national banks in a special and more heavily taxed category, imposing a tax on bank shares at the rate of $5\frac{1}{2}$ mills (\$5.50 per \$1,000) "on the privilege of ownership of each * * * share of stock" based on the "capital account" of each bank. "Capital account" was defined to be the "capital, surplus and undivided profits" as shown on the latest annual report for each year—in this case as of December 31, 1952.

Appellant's position is set forth in its brief as follows:

"This is not a case of tax avoidance or claimed immunity by appellant. * * * The singularly important and impelling object of this case is to assure tax equality with competitors. The powerful and rapidly growing savings and loan associations (or their shareholders) should be taxed at the same rate as shares in national banks in Michigan, as required under RS § 5219—regardless of what that rate may be."

The validity of the tax imposed under PA 1953, No 9, must rest upon the grant of congressional authority contained in 12 USCA, § 548 (RS § 5219), whereby congress conferred upon the States the power to tax national bank shares, providing that:

Michigan Supreme Court Opinion

[615] "The several States may (1) tax said shares * * * provided the following conditions are complied with: * * *

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks; *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

Five intervening national banks asserted that they had similarly paid the 1952 tax under protest and sought to recover the amount so paid. The court, however, confined the proofs to the plaintiff, Michigan National Bank, and adjudicated only plaintiff's case.

The Michigan Bankers Association took a contra view to that of appellant, as is disclosed by the following from the trial court's opinion:

"The Michigan Bankers Association (representing both State and national banks) has been permitted to file a brief as *amicus curiae* in which it states the position of its members in these words:

"The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of the competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantage among the various types of institutions; [616] and that it has proven to be simple to administer. Such a system is obviously desirable, and this association, believing the

Michigan Supreme Court Opinion

system to be entirely legal within the limitations of the Federal Constitution and statutes, does not want to see it destroyed.'

"And their counsel takes substantially the same position upon the several questions presented as does the attorney general on behalf of the defendants."

Plaintiff has its principal banking office in the city of Lansing. It carries on a banking business in that city and in the cities of Battle Creek, Flint, Grand Rapids, Marshall, Port Huron, and Saginaw. In these cities there are 16 building/savings and loan associations.

Appellant was incorporated in 1941, and from December, 1941, to December 31, 1957, appellant had grown in total resources from about \$68,000,000 to approximately \$481,000,000, without the issuance of any additional common stock except stock dividends.

The transcript of testimony amounted to thousands of pages and hundreds of exhibits were introduced. The printed appendices and briefs consist of more than 1,650 pages.

Plaintiff offered testimony of officers of the loan associations and of plaintiff bank as to the claimed existence of mortgage loan competition between the 2 types of institutions, contending that:

"The *only* important questions are whether the capital employed by savings and loan associations in competition with national banks is substantial compared to the latter's capitalization and whether the residential mortgage loan business is a substantial phase of the business of national banks."

Plaintiff introduced proof in regard to the growth of savings and loan associations to the effect that in 1900 the associations were composed of poor people who had banded themselves together in neighborhood [617] groups, obligating themselves to set aside small weekly savings in order that they might mutually enable other savings members to borrow

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to build small homes; that banking facilities were not available to such groups, as national banks had at that time no authority to accept savings accounts nor to engage in the home mortgage loan business; that the associations of today are Statewide and nationwide in operation and their moneyed capital is no longer obtained from nor loaned to the poorer class; that in 1900 the total assets of all associations in Michigan were only slightly over \$10,000,000, but by 1952 these assets had increased to over \$537,000,000.

Plaintiff also introduced proof that the loaning of money on the basis of mortgages secured by residential real estate, was a substantial phase of its business; that as of December 31, 1952, appellant held aggregate real-estate loans of \$62,000,000 and, in addition, had outstanding unsecured loans of approximately \$8,000,000 for repair and modernization of residential property; that these loans amounted to approximately 22% of the total assets of appellant bank (\$305,802,000); that as of that date the loans secured by mortgages on residential real estate were of the following types: FHA, approximately \$27,000,000; VA, \$9,000,000; and conventionals, \$15,000,000.

Appellant disclosed, by the public records of the register of deeds office in each of the 6 counties where plaintiff's banks were located, that during the year 1952, 2,934 mortgages were recorded by appellant, totalling \$23,089,907.33, of which approximately \$18,600,000 represented residential real estate loans; and that in the same counties in 1952 the records disclosed that the 16 savings and loan associations recorded 6,498 mortgages totalling \$35,575,546.27, some of which, however, were secured by commercial property.

[618] Defendants summarize their position as follows:

"In the last analysis, savings and loan associations cannot be in 'substantial competition with the business of national banks' because they cannot and do not engage sufficiently in the activities characteristically carried

Michigan Supreme Court Opinion

on by the national banks. Stated another way, if they are not comparable institutions in substance, how can they be in substantial competition?"

To substantiate their position, defendants offered proof showing:

(1) While appellant engaged in all activities permitted national banking associations, including the ability to create checkbook money and receive time, savings, and demand deposits, savings and loan associations were able to engage solely in the narrow activity of making first mortgage loans secured by residential properties (with minor exceptions) or loans on the security of its savings shares accounts.

(2) During 1952 the 16 savings and loan associations doing business in the same cities as appellant bank made total commercial loans secured by business properties amounting to \$293,000—.9 of 1% of their total real-estate loans, or about 1/4 of 1% of their total assets. Appellant bank made such loans in the approximate amount of \$8,000,000, which constituted 13% of its total real-estate loans and was in excess of 2½% of its total assets. Of loans made by the savings and loan associations, practically all—99.1%—were secured by residential real estate, while only 87% of appellant's mortgage loans were so secured. Of these 87%, 70% or 7/10 were guaranteed by the Federal government as FHA and VA loans. Therefore, only 25% of appellant's mortgages were conventional residential nonbusiness mortgages; 60% were guaranteed FHA and VA [619] mortgages; and 13% were mortgages on commercial property. The 16 associations, on the other hand, carried FHA and VA loans amounting to only 19% of total loans, conventional residential nonbusiness loans amounting to 79.963% of their total loans, and mortgages on commercial property being practically nil.

(3) The total loan activities engaged in by the institutions illustrate different objectives. Only 42% of appellant bank's

Michigan Supreme Court Opinion

total loans were secured by real estate, while 58% were not so secured. All of the associations' loans were secured by real estate.

(4) About 20% of appellant's total assets were employed in mortgage loans and approximately 23% of its interest income was received from mortgage loans. In the loan field, appellant's instalment loans, unsecured by real estate, were the most profitable. Here appellant received approximately 45% of its total interest income from the employment of approximately 19% of its total assets.

(5) In 1952 appellant had total deposits of some \$283,000,000, classified into approximately \$165,000,000 of commercial deposits (including \$22,000,000 of public funds) upon which no interest was paid to the depositors, approximately \$37,000,000 in time certificates, and approximately \$81,000,000 in savings deposits. In 1952 all the funds it had to loan were from deposits. Appellant used all of its funds—capital, surplus, undivided profits, reserves, and deposits, for the operation of its business. It cannot allocate or trace any dollar of its capital account to any particular mortgage or loan business. The savings and loan associations of Michigan cannot accept deposits, and, therefore, had none.

The court justified its finding of no cause of action by stating its conclusions as follows:

[620] "1. Since 1887, the courts have consistently held in every case squarely involving the question that the State may exempt or prefer on the ground of public policy mutual savings bank and other like institutions, provided such exemption is based on just reason and is not made for the hostile purpose of an unfriendly discrimination with national banks.

"2. That the power of the State to make such exemptions on the ground of public policy is an important one, grounded in history and on precedent. The intention of congress to destroy it should not be lightly inferred.

"3. The 1923 and 1926 amendments to section 5219

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and the amendments to the Federal reserve act broadening the powers of the national banks were not intended to take from the State such long established and well-recognized power.

"4. That from their beginnings and continuously throughout their history, building and loan associations have been similar in character and purpose to and of the same general class of mutual thrift and home financing institutions as mutual savings banks.

"5. That congress in the home owners loan act of 1933 definitely recognized and approved such classification of savings/building and loan associations and the propriety of different tax treatments of banks and such associations and in effect, said that money invested in such associations is not moneyed capital in competition with the business of national banks.

"6. That Michigan's tax treatment of savings/building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks."

The general rule of partial exemption under RS § 5219 has been well established, as is disclosed by the following decisions:

Hepburn v. School Directors, 23 Wall (90 US) 480, 485 (23 L ed 112):

[621] "It could not have been the intention of congress to exempt bank shares from taxation because some moneyed capital was exempt. Certainly there is no presumption in favor of such an intention. To have effect it must be manifest. The affirmative of the proposition rests upon him who asserts it."

Adams v. Nashville, 95 US 19, 22 (24 L ed 369), in holding that an exemption of investments in municipal bonds did not violate RS § 5219, the court held:

"The act of congress was not intended to curtail the State power on the subject of taxation. It simply required that capital invested in national banks should not be taxed

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at a greater rate than like property similarly invested. It was not intended to cut off the power to exempt particular kinds of property, if the legislature chose to do so. * * * The discretionary power of the legislature of the States over all these subjects remains as it was before the act of congress of June, 1864. The plain intention of that statute was to protect the corporations formed under its authority from unfriendly discrimination by the States in the exercise of their taxing power."

Boyer v. Boyer, 113 US 689, 693 (5 S Ct 706, 28 L ed 1089), the court in concluding that the Pennsylvania statute was inconsistent with RS § 5219 distinguished *Hepburn v. School Directors*, *supra*, stating:

"What the court had to decide, and all that it did decide, was whether the exemption from local taxation, of mortgages, judgments, recognizances, and money due upon agreements for the sale of real estate, in the hands of individuals, was a partial exemption only; that is, whether it was so substantial in its nature and operation as to affect the integrity of the general assessment for local purposes. * * * That case is authority for the proposition that a *partial* exemption by a State, for local purposes, of moneyed capital in the hands of individual citizens does not, [622] of itself and without reference to the aggregate amount of moneyed capital not so exempted, establish the right to a similar exemption in favor of national bank shares held by persons within the same jurisdiction."

Mercantile Bank v. New York, 121 US 138 (7 S Ct 826, 30 L ed 895). This case is recognized as an important one in interpreting RS § 5219. The court relied upon *Hepburn v. School Directors*, *supra*, and in determining that for public policy reasons section 5219 was not violated by State exemptions, the court held (pp 145, 146, 161):

"The proposition which the appellant seeks to establish is, that the State of New York, in seeking to tax national bank shares, has not complied with the condition contained in section 5219 of the Revised Statutes * * * in that, it has by its legislation expressly exempted from

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all taxes in the hands of the individual citizens numerous species of moneyed capital, aggregating in actual value the sum of \$1,686,000,000, whilst it has by its laws subjected national bank shares in the hands of individual holders thereof (aggregating a par value of \$83,000,000), and State bank shares (having a like value of \$22,815,700), to taxation upon their full actual value, less only a proportionate amount of the real estate owned by the bank. This exemption, it is claimed, is of a 'very material part relatively' of the whole, and renders the taxation of national bank shares void. * * *

"The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares. However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, which the policy of the State exempts from taxation for its own purposes, that exemption cannot affect the rule for the [623] taxation of shares in national banks, provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation."

Tax exemption or preferential tax treatment has been applied to mutual savings banks and savings and loan associations, as is disclosed by the following cases:

Mercantile Bank v. New York, 121 US 138, 160 (7 S Ct 826, 30 L ed 895), in construing RS § 5219 and justifying exemptions granted to savings banks, the court said (pp 160, 161):

"It cannot be denied that these deposits constitute moneyed capital in the hands of individuals within the terms of any definition which can be given to that phrase; but we are equally clear that they are not within the meaning of the act of congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must thereby also be exempted from taxation. No one can suppose for a moment that

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savings banks come into any possible competition with national banks of the United States. They are what their name indicates, banks of deposit for the accumulation of small savings belonging to the industrious and thrifty. To promote their growth and progress is the obvious interest and manifest policy of the State. Their multiplication cannot in any sense injuriously affect any legitimate enterprise in the community. We have already seen that by previous decisions of this court it has been declared that 'it could not have been the intention of congress to exempt bank shares from taxation because some moneyed capital was exempt;' *Hepburn v. School Directors*, 23 Wall (90 US) 480 (23 L ed 112); and that 'the act of congress was not intended to curtail the State power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than like property similarly invested. [624] It was not intended to cut off the power to exempt particular kinds of property, if the legislature chose to do so.' *Adams v. Nashville*, 95 US 19 (24 L ed 369)."

Davenport Bank v. Davenport Board of Equalization, 123 US 83, 86 (8 S Ct 73, 31 L ed 94), in upholding exemptions of savings banks, the court again held:

"The whole subject has been recently considered by this court in the case of *Mercantile Bank v. New York*, 121 US 138 (7 S Ct 826, 30 L ed 895). In that opinion it was held that, while the deposits in the savings banks of New York constituted moneyed capital in the hands of individuals, yet it was clear that they were not within the meaning of the act of congress in such a sense as to require that because they were exempted from taxation the shares of stock in national banks must also be exempted. The reason given for this is that the institutions generally established under that name are intended for the deposits of the small savings and accumulations of the industrious and thrifty; that to promote their growth and progress is the obvious interest and manifest policy of the State; and, as was said in *Hepburn v. School Directors*, 23 Wall (90 US) 480 (23 L ed 112), it could not have been the intention of congress to exempt bank

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shares from taxation because some moneyed capital was exempt."

Bank of Redemption v. Boston, 125 US 60 (8 S Ct 772, 31 L ed 689). Counsel urged that there was such a marked difference between the Massachusetts and the New York mutual savings banks, the *Mercantile Bank Case*, *supra*, would not apply. In disposing of this contention, the court therein stated (pp 66-68) :

"The tax on savings banks is based upon deposits merely. This is because deposits furnish the only [625] capital which is invested and employed. The institutions themselves, although corporations, have no capital stock, and are managed by trustees, not selected by the depositors, but by public authority. The whole amount of the deposits, with the exceptions noted, are subjected to a tax of 1/2 of 1%. On the other hand, the national banks pay a tax assessed upon the market value of the shares as personal property, upon a valuation and at a rate exactly equal to that of all other personal property subject to taxation in the State. But shares of the national banks, while they constitute the capital stock of the corporations, do not represent the whole amount of the capital actually employed by them. They have deposits, too, shown in the present record to amount, in Massachusetts, to \$132,042,332. The banks are not assessed for taxation on any part of these, although these deposits constitute a large part of the actual capital profitably employed by the banks in the conduct of their banking business. But it is not necessary to establish the exact equality in result of the 2 modes of taxation. The question of the exemption from taxation of deposits in savings banks, as affecting the rule for the State taxation of national bank shares, was very deliberately considered by this court in the case of *Mercantile Bank v. New York*, 121 US 138, 160 (7 S Ct 826, 30 L ed 895) ; and the conclusion reached in that case was reaffirmed in the case of *Davenport Bank v. Davenport Board of Equalization*, 123 US 83 (8 S Ct 73, 31 L ed 94). * * *

"It is impossible, in our judgment, to distinguish the present from the case of the New York savings banks,

or of those of Iowa considered in the case of the Davenport Bank. * * *

"It is alleged that in Massachusetts savings banks are permitted to transact a banking business in the way of loans upon personal securities, which assimilates them more closely to national banks, and takes away the reason for the application of the rule to them which was applied to the case of the savings banks of New York. But the difference [626] mentioned, if it exists at all, is immaterial; the main purpose and chief object of savings banks, as organized under the laws of Massachusetts, are the same as those in New York, as considered in the case of the Mercantile Bank. They are substantially institutions, under public management, in pursuance of a great and beneficial public policy, organized for the purpose of investing the savings of small depositors, and not as banking institutions in the commercial sense of that phrase. We adhere to the rule as declared in the cases heretofore decided, which forecloses further discussion."

Aberdeen Bank v. Chehalis County, 166 US 440, 460, 461 (17 S Ct 629, 41 L ed 1069). The court reaffirmed the 3 cases cited above, with emphasis on the *Mercantile Bank* decision, and stated:

"As to savings banks it was held that, though it could not be denied that their deposits constituted moneyed capital in the hands of individuals, yet it was clear that they were not within the meaning of the act of congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must also be exempted; that it was part of the policy of the State to encourage the accumulation of small savings belonging to the industrious and thrifty, and it was within the reasonable exercise of the power of the State to exempt particular kinds of property. * * *

"The conclusions to be deduced from these decisions are that money invested in corporations or in individual enterprises that carry on the business of railroads, of manufacturing enterprises, mining investments, and investments in mortgages, does not come into competi-

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tion with the business of national banks, and is not therefore within the meaning of the act of congress; that such stocks as those in insurance companies may be legitimately taxed on income instead of on value, because such companies are not competitors for business with national banks; and that exemptions, however large, of deposits in [627] savings banks, or of moneys belonging to charitable institutions, if exempted for reasons of public policy and not as an unfriendly discrimination against investments in national bank shares, should not be regarded as forbidden by section 5219 of the Revised Statutes of the United States."

First National Bank of Wellington v. Chapman, 173 US 205, 214 (19 S Ct 407, 43 L ed 669) :

"The result seems to be that the term 'moneyed capital,' as used in the Federal statute, does not include capital which does not come into competition with the business of national banks, and that exemptions from taxation, however large, such as deposits in savings banks or moneys belonging to charitable institutions, which are exempted for reasons of public policy and not as an unfriendly discrimination as against investments in national bank shares, cannot be regarded as forbidden by the Federal statute."

The approval of the supreme court of the United States of partial exemptions of mutual savings bank also applies to savings and loan associations, as shown by the following decisions:

Mercantile National Bank of Cleveland v. Hubbard (ND Ohio) 98 F 465, 471. Judge Taft wrote the opinion and clearly differentiated between national banks and building and loan associations, stating:

"There is proof of the capital in savings banks, and also of the capital invested in building and loan associations; but, under the decision of *Mercantile Bank v. New York*, 121 US 138 (7 S Ct 826, 30 L ed 895), capital invested in savings banks cannot be regarded as moneyed capital, within the meaning of section 5219, exemption

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of which from taxation can constitute a discrimination within the inhibition of that section. It seems to me that building associations are certainly not to be differentiated in their purpose or object, or practical effect, from savings [628] banks, and that the capital invested in them, though subject to a somewhat different rule of taxation, cannot be regarded as moneyed capital in competition with the moneyed capital in national banks, any more than is capital invested in savings banks. The chief object of building associations is to encourage the building of small houses by poor people, and the saving from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house. The mere fact that every shareholder in a building association need not be a borrower cannot, I think, change the effect of the general purpose of the building association law."

This case was reversed by the circuit court of appeals in *Mercantile National Bank of Cleveland v. Hubbard* (CCA 6), 105 F 809. Upon remand injunction issued in *Mercantile National Bank of Cleveland v. Lander* (ND Ohio), 109 F 21. Appeal to the supreme court of the United States resulted in reversal (*Lander v. Mercantile Bank*, 186 US 458 [22 S Ct 908, 46 L ed 1 247]), with specific direction to reverse the circuit court of appeals and affirm the judgment of the circuit court.

In *Hoenig v. Huntington National Bank of Columbus* (1932) (CAA 6), 59 F2d 479, 482, certiorari denied 287 US 648 (53 S Ct 93, 77 L ed 560), it was said:

"It is insisted, however, that the present day building association is a very different type of institution from the 'small, neighborhood, mutual associations of Judge Taft's time,' and emphasis is laid upon the construction of offices in similitude to those of banks, the competition for deposits, the payment of deposits on demand, and the making of loans upon collateral security. We do not think that the general nature of the business of building associations has so far changed as to make the law established by the above-cited cases inapplicable.

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Compare *United States* [629] v. *Cambridge Loan & Building Co.*, 278 US 55 (49 S Ct 39, 73 L ed 180). The chief purpose of these institutions is still "to encourage the building of small houses by poor people, and the saving from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house." *Mercantile National Bank v. Hubbard* (ND Ohio), 98 F 465, 471."

An examination of the record in the *Hoenig Case* discloses:

1. The assets of the savings and loan associations in Ohio in 1926 were approximately equal to the total assets of all national banks in Ohio; while in 1952 the assets of all savings and loan associations in Michigan constituted less than 15% of the total assets of national banks in Michigan; and
2. The assets of savings and loan associations in Ohio in 1926 were approximately double the total assets of such associations in Michigan in 1952.

Keeping in mind inflation and change in the general status of our economy, the record in the *Hoenig Case* showed that the average investment in the Ohio associations was about \$500 compared to approximately \$1,500 in Michigan in 1952, and the average outstanding loan was \$2,806 in 1926, at the time the *Hoenig Case* was decided, while the average outstanding loan of Michigan associations in 1952 was \$4,872.

The home owners' loan act was enacted by congress in 1933 (ch 64, §§ 1-9, 48 Stat 128 [12 USCA, §§ 1461-1468, inclusive, as amended]). The purpose of the act is set forth in section 5 (12 USCA, § 1464, as amended) as follows:

"(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the board is authorized, under such rules and regulations [630] as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'federal savings and loan

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associations, and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States."

In determining States' rights to tax such associations, congress provided in the same section :

"(h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

The trial court commented upon congressional action disclosing that congress did not consider savings and loan associations to be in competition with either State or national banks, and in its opinion said :

"In providing for the taxation of these institutions by the State, congress could have made the measuring stick, the limit on the rate of taxation, that imposed on national banks, also a creation of congress. It could have made such measuring stick the rate imposed by the States on State banks and [631] it could have made it that imposed on other moneyed capital. It did none of these things. Instead, it provided that the tax imposed should not be greater than that imposed on other similar local mutual or cooperative thrift and home financing institutions."

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"Congress thus identified the institutions that it considered to be in competition with Federal savings and loan associations. Obviously, congress did not consider savings and loan associations to be in competition with banks, either State or national."

The home owners' loan act of 1933 provision markedly differs with the provision in regard to States' rights to tax joint-stock land banks (act of congress July 17, 1916, ch 245, § 26, 39 Stat 380) where congress provided:

"Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section 5219 of the Revised Statutes with reference to the shares of national banking associations."*

The congressional provision for national agricultural credit corporations (act of congress March 4, 1923, ch 252, title 2, § 211, 42 Stat 1469) also provided a different test for State taxation than congress provided for Federal savings and loan associations, as is disclosed by the following:

"Taxation by a State of the shares in national agricultural credit corporations, or of dividends derived therefrom, or of the income of said corporations, or real estate owned by them, shall be such only as is or may be authorized by law in the case of national banking associations; and taxation by a [632] State of the debentures or other obligations of such corporations shall not be at a higher rate than the rate applicable to other moneyed capital in the hands of individual citizens thereof."*

The following decisions disclose that because plaintiff bank's shares were taxed at a different rate, or assessed by a different method than the method employed to tax the building and loan associations, does not violate RS § 5219:

*12 USCA, § 932—Reporter.

*12 USCA, § 1261—Reporter.

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Tradesmens National Bank of Oklahoma City v. Oklahoma Tax Commission (1940), 309 US 560, 567 (60 S Ct 688, 84 L ed 947) :

"A consideration of the course of judicial decision on RS § 5219 and its predecessors can leave no doubt that the various restrictions it places on the permitted methods of taxation are designed to prohibit only those systems of State taxation which discriminate in practical operation against national banking associations or their shareholders as a class. Compare *First National Bank v. City of Hartford*, 273 US 548 (47 S Ct 462, 71 L ed 767, 59 ALR 1) ; *Amoskeag Savings Bank v. Purdy*, 231 US 373 (34 S Ct 114, 58 L ed 274) ; *Covington v. First National Bank of Covington*, 198 US 100 (25 S Ct 562, 49 L ed 963) ; *Lionberger v. Rouse*, 9 Wall (76 US) 468 (19 L ed 721). Thus it is not a valid objection to a tax on national bank shares that other moneyed capital in the State or shares of State banks are taxed at a different rate or assessed by a different method unless it appears that the difference in treatment results in fact in a discrimination unfavorable to the holders of the shares of national banks. *Amoskeag Savings Bank v. Purdy*, *supra*; *Covington v. First National Bank of Covington*, *supra*."

Covington v. First National Bank of Covington (1905), 198 US 100, 114, 115 (25 S Ct 562, 49 L ed 963) :

[633] "As to the alleged discrimination against shareholders in national banks because the assessment of the property of State banks is upon the franchise and not upon the shares of stock, there is nothing in the bill to show that this difference in method operates to discriminate against national bank shareholders by assessing their property at higher rates than are imposed upon capital invested in State banks. And as to the deduction of the value of real estate and other deductions allowed to State banks, the supreme court of Kentucky has held that all deductions allowed to State banks must be allowed in like manner in assessing the property of shareholders in national banks, *Commonwealth v. Citizens' National Bank*, 117 Ky 946 (80 SW 159). Nor does the

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allegation that in cities of the first, second, and third class State banks are assessed upon their shares for city taxation, but upon their franchises and property for State and County taxation, in the absence of averments of fact showing that thereby a heavier burden of taxation is imposed upon national than State banks in such cities, warrant judicial interference for the protection of shareholders in national banks. *Davenport Bank v. Davenport Board of Equalization*, 123 US 83 (8 S Ct 73, 31 L ed 94)."

People v. Weaver (1879), 100 US 539 (25 L ed 705), held that the restriction contained in the act of congress (section 5219) had to do with the actual incidence and practical burden of the tax upon the taxpayer.

Appellees introduced testimony, which was not controverted, that building and loan associations pay taxes which appellant bank does not pay (franchise, capital stock increase, use, and personal property taxes), and further disclosed that the ratio of State and local taxes to total assets of the associations was .089, while appellant's rate was .091; and, also, in regard to the proportion of the intangible tax [634] to the total assets of national banks in Michigan and the proportion of the Michigan franchise tax to the total assets of all savings and loan associations showing a ratio of .02459 for all Michigan national banks and .02243 for all State savings and loan associations.

In dealing with the phrase "coming into competition with the business of national banks" as used in RS § 5219, the court in *First National Bank of Guthrie Center v. Anderson, County Auditor* (1926), 269 US 341 (46 S Ct 135, 70 L ed 295), stated (pp. 347, 348) :

"The earlier decisions have been reviewed from time to time in later cases, and all, taken collectively, may be summarized as showing, so far as is material here

"1. The purpose of the restriction is to render it impossible for any State, in taxing the shares, to create and foster an unequal and unfriendly competition with na-

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tional banks, by favoring shareholders in State banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking. *Mercantile Bank v. New York*, 121 US 138, 155 (7 S Ct 826, 30 L ed 895) ; *Des Moines National Bank v. Fairweather*, 263 US 103, 116 (44 S Ct 23, 68 L ed 191).

"2. The term 'other moneyed capital' in the restriction is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks. *Mercantile Bank v. New York*, *supra*, 157; *Aberdeen Bank v. Chehalis County*, 166 US 440, 461 (17 S Ct 629, 41 L ed 1069).

"3. Moneyed capital is brought into such competition where it is invested in shares of State banks or in private banking; and also where it is employed, substantially as in the loan and investment features [635] of banking, in making investments, by way of loan, discount or otherwise, in notes, bonds, or other securities with a view to sale or repayment and reinvestment. *Mercantile Bank v. New York*, *supra*, 155-157; *Palmer v. McMahon*, 133 US 660, 667, 668 (10 S Ct 324, 33 L ed 772) ; *Talbot v. Silveer Bow County*, 139 US 438, 447 (11 S Ct 594, 35 L ed 210).

"4. The restriction is not intended to exact mathematical equality in the taxing of national bank shares and such other moneyed capital, nor to do more than require such practical equality as is reasonably attainable in view of the differing situations of such properties. But every clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks is a violation of both the letter and spirit of the restriction. *People v. Weaver*, 100 US 539 (25 L ed 705) ; *Boyer v. Boyer*, 113 US 689, 701 (5 S Ct 706, 28 L ed 1089) ; *First National Bank of Wellington v. Chapman*, 173 US 205, 216 (19 S Ct 407, 43 L ed 669)."

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Building and loan associations are incorporated in Michigan under PA 1887, No. 50, as amended, and the purpose of such associations is set forth in section 1,* as follows:

"Building and improving homesteads, * * * accumulating money to be loaned to its members * * * or assisting its members to accumulate and invest their savings."

Section 37 of the act provides:

"No building and loan association shall, directly or indirectly, do a banking business." (CL 1948, § 489.37 [Stat Ann 1957 Rev § 23.580]).

The fundamental difference between a bank making loans from deposits and loans made otherwise, was recognized in *First National Bank of Shreveport* [636] v. *Louisiana Tax Commission* (1933), 289 US 60, 64 (53 S Ct 511, 77 L ed 1939, 87 ALR 840), where it is said:

"If we may take judicial notice of the functions of these alleged competitors of the plaintiffs, there appears ample basis for the classification, among other things, in this: There is a fundamental difference between banks, which make loans mainly from money of depositors, and the other financial institutions, which make loans mainly from the money supplied otherwise than by deposits."

Appellant relies on *First National Bank of Hartford v. City of Hartford* (1927), 273 US 548 (47 S Ct 462, 71 L ed 767, 59 ALR 1), and states that the trial court:

"Erroneously predicated his decision upon the proposition that savings and loan associations were different in character and in purpose from national banks, and, therefore, could not compete as a matter of law, within the meaning of RS § 5219. This is directly contrary to the ruling of the United States supreme court that:

"Competition in the sense intended [by RS § 5219] arises not from the character of the business of those who compete but from the manner of the employment of the capital at their command." *First National Bank of Hartford v. City of Hartford* (1927), 273 US 548, 557."

*See CL 1948, § 489.1 (Stat Ann 1957 Rev. § 23.541)—Reporter.

Appellant, recognizing that its contention was contrary to the cases above cited allowing partial exemption for savings banks and building and loan associations (and particularly was this true in regard to *Bank of Redemption v. Boston*, 125 US 60 [31 L ed 689]) states:

"However, a contention was made by the plaintiff national bank that Massachusetts savings banks were permitted to transact a banking business in the way [637] of loans upon personal securities which more closely assimilated them to national banks, than to the savings banks such as were involved in *Mercantile (Mercantile Bank v. New York)*. This argument the court summarily considered and dismissed, saying (in *Bank of Redemption v. Boston*, *supra*, 68) :

"But the difference mentioned, if it exists at all, is immaterial; the main purpose and chief object of savings banks, as organized under the laws of Massachusetts, are the same as those in New York, as considered in the case of the *Mercantile Bank*. They are substantially institutions, under public management, in pursuance of a great and beneficial public policy, organized for the purpose of investing the savings of small depositors, and not as banking institutions in the commercial sense of that phrase."

"To the extent that this case stands for the proposition that the character, object, and purpose of an institution claimed to be in competition with a national bank was determinative rather than the manner of employment of its capital, this case must be deemed to be overruled by the later cases which held, as stated in *First National Bank of Hartford v. Hartford* (1927), *supra*, 557, 558:

"Section 5219 is not directed merely at discriminatory taxation which favors a competing banking business. Competition in the sense intended arises not from the character of the business of those who compete but from the manner of the employment of the capital at their command. * * * To so restrict the meaning and application of section 5219 would defeat its purpose."

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We do not agree with appellant that the *Hartford* decision overruled the *Bank of Redemption Case*, but agree with appellees' answer:

"Appellant attempts to persuade us that the *Bank of Redemption* decision was overruled by *First National Bank of Hartford v. Hartford*, 273rd US 548. There is utterly nothing in the *Hartford* decision [638] which expressly or impliedly undertakes a repudiation of *Bank of Redemption*. *Hartford* was addressed to a situation where sweeping preferences were granted to large areas of competing money capital."

The *Hartford* decision established that a mixed question of fact and law is involved in determining the question of "substantial competition" and stated (p 552) :

"The validity of the tax complained of depends upon whether or not the moneyed capital in the State thus favored is employed in such a manner as to bring it into substantial competition with the business of national banks.

"The question thus raised involves considerations both of fact and of law. To answer it, it is necessary to ascertain the nature and extent of the moneyed capital in the hands of individual citizens within the State and the relation of its employment, in point of competition, to the business of plaintiff and other national banks. It is necessary also to ascertain the precise meaning to be given the statute as applied to the facts in hand in order to determine whether the particular moneyed capital and the particular competition with which we are here concerned are moneyed capital and competition within the spirit and purpose of the statute. The question is thus a mixed one of law and fact, and in dealing with it we may review the facts in order correctly to apply the law."

Not only did the *Hartford* decision deal with sweeping exemptions for a large number of competing institutions, but the equivalence of the tax imposed on national banks and other institutions was not considered, as evidence by the following (pp 551, 552) :

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"The court below assumed, and it was not questioned upon the argument here, that this tax is not to be taken as an equivalent or substitute for the *ad* [639] *valorem* tax levied upon bank shares and no question of the possible equivalence of the 2 schemes of taxation is presented."

First National Bank of Hartford v. City of Hartford, *supra*, established that "approximate equality in taxation" was a major test, by stating at page 560:

"But a consideration of the entire course of judicial decision on this subject can leave no doubt that State legislation and taxing measures which by their necessary operation and effect discriminate against capital invested in national bank shares in the manner described are intended to be forbidden."

The record in this appeal discloses that Michigan building and loan associations operated in a narrow, restricted field, are markedly different in character, purpose and organization from national banks, and are not in "substantial competition" with national banks.

The record establishes that there was practical equality of the total tax imposed upon building and loan associations and upon national banks, and any difference would be justified as partial exemptions under the decisions of the supreme court of the United States quoted above. The restriction contained in RS § 5219 has to do with the actual incidents and practical burden of the tax imposed. (See *People v. Weaver*, 100 US 539 [25 L ed 705].)

Appellant, as a taxpayer claiming immunity from the tax, had the burden of establishing its right to the exemption. There is no presumption of unlawful discrimination or that Michigan PA 1953, No. 9, imposed a tax "at a greater rate than [was] assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks." To meet this test, appellant had to introduce proof that was "manifest." (See *Hepburn v. School Directors*, 23 Wall [640] [90 US] 480 [23 L ed

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112], and *Norton Company v. Department of Revenue of Illinois*, 340 US 534 [71 S Ct 377, 95 L ed 517].) Plaintiff failed to meet this burden of proof.

We reiterate and approve the finding of the trial court:

"That Michigan's tax treatment of savings/building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks."

Affirmed. No costs, a public question involved.

DETHMERS, C. J., and CARR, SMITH and EDWARDS, JJ., concurred.

KAVANAGH and BLACK, JJ., did not sit.

SOURIS, J., took no part in the decision of this case.

Judgment of Michigan Supreme Court

**AT A SESSION OF THE SUPREME COURT OF THE
STATE OF MICHIGAN, Held at the Supreme Court Room,
in the Capitol, in the City of Lansing, on the 25th day of
February in the year of our Lord one thousand nine hundred
and sixty.**

Present the Honorable

**Michigan National Bank,
Plaintiff and Appellant,
vs. 48138
Department of Revenue, et al.,
Defendants.**

**JOHN R. DETHMERS,
Chief Justice,
LELAND W. CARR,
HARRY F. KELLY,
TALBOT SMITH,
GEORGE EDWARDS,
Associate Justices.**

The record and proceedings in this cause having been brought to this Court by appeal from the Court of Claims, and the same, and the grounds of appeal specified therein, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Court, there is no error, Therefore it is ordered and adjudged that the judgment of said Court of Claims be and the same is hereby in all things affirmed, and that no costs be awarded herein.

[fol. 1370]

IN THE SUPREME COURT OF THE STATE OF MICHIGAN

Appeal from the Court of Claims

Honorable Fred N. Searl, Circuit Judge,
Acting Judge of the Court of Claims

No. 48,138

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States, Plaintiff and Appellant,

NATIONAL BANK OF WYANBETTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN), COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States, Intervening Plaintiffs,

v.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE, Defendants and Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed May 17, 1960

I. Notice is hereby given that Michigan National Bank, the plaintiff and appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Michigan filed February 25, 1960, affirming the dismissal of the complaint entered in this action.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257 (2).

[fol. 1371] II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Appellant's Appendix (Vols. I, II, III).
2. Appellees' Appendix.
3. Opinion of the Michigan Supreme Court.
4. Final judgment.
5. Notice of Appeal to the Supreme Court of the United States.
6. Proof of Service of Notice of Appeal.

III. The following questions are presented by this appeal:

1. Does Revised Statute, Section 5219 (12 U. S. C. Sec. 548), prohibit the State of Michigan from taxing (through Act 9 of the Public Acts of 1953) national bank shares at a rate 8 (or more) times greater than "other moneyed capital in the hands of individual citizens" consisting of shares in state and federal savings and loan associations, where the savings and loan associations, privately managed and operated for profit, are in direct competition with a substantial phase of the national banking business, to wit, the business of making residential mortgage loans to the public in the same areas, and such moneyed capital is more than 3 times as large as the total capitalization of all national banks in Michigan?

2. Are savings and loan associations in Michigan which employ large amounts of moneyed capital in direct, actual, economic competition with a substantial phase of the business of national banks, precluded from "coming into competition with the business of national banks" under R. S. 5219, merely because their "character, purpose and organization" is different from national banks and by statute they may not do "a banking business," or "accept deposits"?

3. Under R. S. 5219, is it proper to ignore the undisputed fact that Act 9 of the Public Acts of Michigan, 1953, is a tax upon national bank shares (assets of the bank less liabilities)—at a rate 8 (or more) times greater than

is assessed upon other competing moneyed capital—and to substitute a different method of testing discrimination, to wit, comparing the ratio of tax dollars paid to total assets of the respective institutions, without deducting liabilities, thus treating the tax as though it were upon assets of the national bank(s), which is not authorized under R. S. 5219, rather than a tax upon the bank shares?

4. Notwithstanding that R. S. 5219 was enacted "to prevent the fostering of unequal competition with the business of national banks by the aid of discriminatory taxation," may a state, under a claimed doctrine of "partial exemption," nevertheless discriminate taxwise against shares of national banks in favor of other moneyed capital invested by the general public, for profit, in shares of savings and loan associations, which associations, privately managed and operating for profit, employ such moneyed capital (three times the capitalization of national banks in Michigan) in direct competition with a substantial phase of the business of national banks?

Butzel, Eaman, Long, Gust & Kennedy, By Thomas G. Long, Victor W. Klein, Philip T. Van Zile, II, Harold A. Ruemenapp, 1881 First National Building, Detroit 26; Michigan, Telephone: Woodward 3-8142.

May 16, 1960.

[fol. 1373] Affidavit of Service (omitted in printing).

[fol. 1375] [File endorsement omitted]

[fol. 1376] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1377]

SUPREME COURT OF THE UNITED STATES

No. 155, October Term, 1960

MICHIGAN NATIONAL BANK et al., Appellants,

vs.

MICHIGAN et al.

Appeal from the Supreme Court of the State of Michigan.

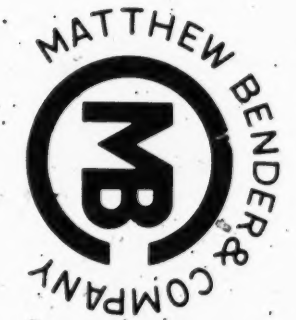
ORDER NOTING PROBABLE JURISDICTION—October 10, 1960

The statement of jurisdiction in this case, having been submitted and considered by the Court, probable jurisdiction is noted.



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STATEMENT AS TO JURISDICTION

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1959

No. 1015 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

**NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (THREE RIVERS,
MICHIGAN), COMMERCIAL NATIONAL BANK OF
IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON,
and THE FIRST NATIONAL BANK AND
TRUST COMPANY OF KALAMAZOO**, banking associations
organized under the laws of the United States,

Intervening Plaintiffs,

vs.

**STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and
LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,**

Appellees.

**ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN**

**Thomas G. Long
Victor W. Klein
Philip T. Van Zile, II
Harold A. Ruemenapp
1881 First National Building
Detroit 26, Michigan
Attorneys for Appellant
Michigan National Bank**

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1959

No. _____

**MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,**

Appellant,

**NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (THREE RIVERS,
MICHIGAN), COMMERCIAL NATIONAL BANK OF
IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON,
and THE FIRST NATIONAL BANK AND
TRUST COMPANY OF KALAMAZOO, banking associations
organized under the laws of the United States,**

Intervening Plaintiffs,

vs.

**STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and
LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,**

Appellees.

**ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN**

STATEMENT AS TO JURISDICTION

**Appellant, Michigan National Bank, a banking association
organized under the laws of the United States, appealed from
the judgment of the Supreme Court of the State of Michigan
entered on February 25, 1960, affirming a judgment for ap-
pellees by the Court of Claims for the State of Michigan and**

submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The opinion of the Court of Claims of the State of Michigan is not reported. A copy is attached hereto as Appendix A. The opinion of the Supreme Court of the State of Michigan is reported in 358 Mich. 611; 101 N.W. 2d 245. A copy is attached hereto as Appendix B. A copy of the judgment entered by the Supreme Court of Michigan is attached hereto as Appendix C.

JURISDICTION

This suit was brought by appellant bank to recover 1952 taxes paid under protest which were assessed on national bank shares pursuant to a statute of the State of Michigan (Act 9 of the Public Acts of Michigan for 1953). On January 20, 1959, judgment was entered for defendants (appellees herein) by the Michigan Court of Claims which, on appeal, was affirmed and judgment entered on February 25, 1960, by the Supreme Court of the State of Michigan. Notice of Appeal was filed in the latter Court on May 16, 1960. In both Courts, appellant attacked the validity of the statute pursuant to which the taxes were assessed on the ground that it was repugnant to the Revised Statutes of the United States, Section 5219 (12 U.S.C.; Section 548). The jurisdiction of the Supreme Court to review the decision by direct appeal is conferred by Title 28 United States Code, Section 1257 (2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *First National Bank v. Hartford*, 273 U.S. 548, 550, 71 L. Ed. 767; *Merchants' National Bank v. Richmond*,

256 U.S. 635, 637, 65 L. Ed. 1135; *First National Bank v. Anderson*, 269 U.S. 341, 346, 70 L. Ed. 295. In each of these cases, as here, a national bank appealed from an adverse state supreme court decision on the ground that the state supreme court erred in sustaining the validity of a state tax on shares of national banks, which appellant asserted was in violation of R. S. 5219.

STATUTES INVOLVED

R.S. 5219

Revised Statutes of the United States 5219 (12 U.S.C., Section 548; 13 Stat. 111, as amended by 15 Stat. 34; 42 Stat. 1499; and 44 Stat. 223), hereinafter referred to as R. S. 5219. The following are the pertinent provisions thereof:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares* . . .

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

The tax in this case is a tax on national bank shares. Since a tax on shares is "in lieu of the others" (Sec. 1(a)), the text

*Emphasis throughout is that of appellant.

of the statute relating to the other three methods of taxation is not here set forth. The full text is set forth herein as Appendix D.

Michigan Tax on National Bank Shares

Act No. 9, Public Acts of Michigan, 1953

Act No. 9 of the Public Acts of Michigan for 1953 (Section 205.132a, C. L. Mich., 1948, 1953 Supp.; M. S. A. 7.556 (2a)) hereinafter referred to as Act 9. The following are the pertinent provisions thereof:

"For the calendar year 1952 . . . and for each year thereafter, or a portion thereof, there is hereby levied upon each resident or nonresident owner of shares of stock of national banking associations located in this state and banks and trust companies organized under the laws of this state, and there shall be collected from each such owner an annual specific tax on the privilege of ownership of each such share of stock, whether or not it is income producing, equal in the case of a share of common stock to $5\frac{1}{2}$ mills upon each dollar of the capital account of such association, bank or trust company represented by such share, and equal in the case of a share of preferred stock to $5\frac{1}{2}$ mills upon the par value of such share."

The full text of Act 9 is set forth herein as Appendix E.

Michigan Taxes on Savings and Loan Associations and their Shares

C. L. '48, Sec. 205.132; M.S.A. Sec. 7.556(2) requires that federal and state savings and loan associations on behalf of their shareholders pay an intangibles tax of $\frac{1}{2}\%$ of 1% ($\frac{3}{2}$ mill) on the paid-in value of their shares. This is the same intangibles tax law which was amended by Act 9, above, in respect to bank shares.

C. L. '48, Sec. 450.304a; M.S.A. Sec. 21.206 requires that state savings and loan associations (but not federal associations) pay an additional $\frac{1}{4}$ mill on the association's capital and legal reserves.

The total statutory tax picture in Michigan as relates to national bank shares and savings and loan associations is set forth on pages 25-6, infra.

QUESTIONS PRESENTED

Broadly stated, the question is:

1. Is Act 9 of the State of Michigan repugnant to R.S. 5219 because Act 9 taxes national bank shares at a rate 8 (or more) times greater than "other moneyed capital in the hands of individual citizens" consisting of shares in state and federal savings and loan associations, which, privately managed and operated for profit, are in direct competition with a substantial phase of the national banking business, to wit, the business of making residential mortgage loans to the public in the same localities, and such moneyed capital is more than 3 times as large as the total capitalization of all national banks in Michigan?

More particularly, with reference to the Michigan Supreme Court's opinion, the questions are:

2. Are savings and loan associations in Michigan which employ large amounts of moneyed capital in direct competition with a substantial phase of the business of national banks, precluded from "coming into competition with the business of national banks" under R. S. 5219, merely because their "character, purpose and organization" are different from national banks and by statute they may not do "a banking business," or "accept deposits"?

3. Under R. S. 5219, is it proper to ignore the fact that Act 9 is a tax upon national bank shares (assets of the bank less liabilities)—at a rate 8 (or more) times greater than is assessed upon other competing moneyed capital—and instead to substitute a different test of discrimination, to wit, comparing the ratio of tax dollars paid to total assets of the respective institutions, without deducting liabilities, thus treating the tax as though it were upon assets of national banks, which is not authorized under R. S. 5219?

4. Notwithstanding that R. S. 5219 was enacted "to prevent the fostering of unequal competition with the business of national banks by the aid of discriminatory taxation," may a state, under a claimed doctrine of "partial exemption," nevertheless discriminate against shares of national banks in favor of other moneyed capital invested by the general public, for profit, in shares of savings and loan associations, when such associations, privately managed and operating for profit, employ such moneyed capital (three times the capitalization of all national banks in Michigan) in direct competition with a substantial phase of the business of national banks?

STATEMENT OF THE CASE

The Michigan Supreme Court recognized (358 Mich. 611, 614):

"In 1953 (PA 1953, No. 9) the [Michigan] legislature amended the intangibles tax law so as to place both State and national banks in a special and more heavily taxed category, imposing a tax on bank shares at the rate of $5\frac{1}{2}$ mills (\$5.50 per \$1,000) 'on the privilege of ownership of each * * * share of stock' based on the 'capital account' of each bank."

In singling out bank shares, the legislature left untouched the much lower rate of tax (\$.65 or less per \$1,000) imposed

on savings and loan associations and their shareholders, notwithstanding the undisputed fact that these associations represented large and increasing aggregations of moneyed capital (presently in excess of one and one-half billion dollars) invested by the general public for profit and employed in direct and keen competition with a substantial phase of the national banking business in Michigan, i.e., the residential mortgage loan business.

Appellant, Michigan National Bank, has banking offices in the following cities in Michigan: Lansing, Battle Creek, Flint, Grand Rapids, Marshall, Port Huron, and Saginaw, in all of which cities appellant is in sharp competition with savings and loan associations in the residential mortgage business.

Prior to the passage of Act 9, appellant paid without protest for the year 1952 a tax of \$18,500 on its shares and \$100,318.24 on its deposits. Act 9 imposed an additional tax of \$49,929.27 on appellant's shares, which amount appellant paid under protest on behalf of its shareholders, and for which amount appellant commenced this suit.¹ The grounds of the protest (Exhibit 1, 920a), and the Petition and Statement of Claim (7a-15a) both allege the federal question here involved, i.e., that Act 9 is violative of R. S. 5219. This federal question was also raised at the trial. See Trial Court opinion (Appendix A, *infra*, p. 2b).

¹Appellant has commenced like actions to recover taxes paid under protest for subsequent years and has claims (1953-1959) in the aggregate amount of \$729,509.71.

Other national banks in Michigan intervened, namely: Commercial National Bank at Iron Mountain; National Bank of Jackson; First National Bank and Trust Company of Kalamazoo; First National Bank at Three Rivers; and National Bank of Wyandotte. The intervenors' actions were held in abeyance pending the outcome of this appeal.

The Michigan Supreme Court in its opinion acknowledged (358 Mich. 611, 614):

"This appeal presents the question of whether CLS 1956, §205.132a (Stat. Ann. 1957, Cum. Supp. §7.556 [2a]) [Act 9], imposing a tax on bank shares, is invalid because it violates section 5219 of the Revised Statutes of the United States (12 USCA, §548)."

The Michigan Supreme Court (358 Mich. 611, 618) stated that:

"Appellant's position is set forth in its brief as follows:

"This is not a case of tax avoidance or claimed immunity by appellant. * * * The singularly important and impelling object of this case is to assure tax equality with competitors. The powerful and rapidly growing savings and loan associations (or their shareholders) should be taxed at the same rate as shares in national banks in Michigan, as required under RS §5219—regardless of what that rate may be.'"²

SUBSTANTIALITY OF FEDERAL QUESTION

States are prohibited from imposing discriminatory taxes against national banks or their shares.

Absent R. S. 5219, a state is without power to tax national bank shares. "National banks are not merely private moneyed institutions but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property and their shares cannot be taxed under state authority except as Congress consents and then only in conformity with the restrictions attached to its consent." *First National Bank of Guthrie Center v. Anderson*, 269 U.S. 341,

²If savings and loan association shares were taxed at the same rate as shares in national banks in Michigan, the State of Michigan would receive an additional Six Million Dollars or more in revenue annually.

347; 70 L. Ed. 295; *Des Moines National Bank v. Fairweather*, 263 U.S. 103, 106; 68 L. Ed. 191; and cases cited.

As relates to a state "tax on shares" of national banks, which is here involved, R. S. 5219, Sec. 1 (b) provides that the tax

"shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks."³

The Test Prescribed by R. S. 5219

A state may impose a tax on shares of national banks under Sec. 1 (a) of R. S. 5219 only if it conforms with the limitations of Sec. 1 (b), thereof. These limitations, as defined by this Court, are that the state tax on national bank shares—

1. "shall not be at a greater rate than is assessed upon other moneyed capital";
2. "coming into competition with [a substantial phase of] the business of national banks"; and
3. such competition is substantial when compared to the capitalization of national banks in the state.

The State of Michigan clearly failed to comply with these requirements in taxing national bank shares under Act 9.

1.

"Other Moneyed Capital"

The money invested for profit, mostly by individuals,⁴ in shares of savings and loan associations, and employed by such associations, for profit, in making loans secured by

³A state tax "on shares" is "in lieu of" the other three methods of state taxation on national banks or their shares permitted under the statute. See R. S. 5219, Sec. 1(a).

⁴However, corporations, partnerships, trusts, etc., also invested in shares of savings and loan associations, for profit.

residential and other real estate mortgages is clearly "other moneyed capital," within the meaning of R. S. 5219. This was conceded by appellee and recognized by the Michigan Supreme Court.

"The terms of the act of Congress * * * include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money . . . reduced again to money and reinvested."

Mercantile Bank v. New York, 121 U.S. 138, 157; 30 L. Ed. 895.

"Greater Rate"

Act 9 placed bank shares in "a special and more heavily taxed category" (358 Mich. 611, 614) taxing such shares at a "greater rate," 8 or more times the rate imposed on savings and loan associations and their shares. See *supra*, pp. 4-5; for full discussion, see *infra*, pp. 25-6.

2.

"Coming into competition with [a substantial phase of] the business of national banks."

The record in this case proves beyond question the fact of actual and direct competition between national banks and savings and loan associations in Michigan. It shows that both institutions were actively and substantially engaged during the tax year in question, and to date, in seeking and securing in the same localities throughout the State investments of the same class, i.e., residential mortgage loans, and it further appears without question that this business, insofar as national banks and appellant were and are concerned, represented a substantial phase of their business.

(a) In the tax year in question (1952), and to date, both national banks and savings and loan associations were pri-

vately managed financial institutions, operating for a profit in the same localities in Michigan, each making comparable residential mortgage and home improvement loans to the general public.

(b) Appellant national bank held \$60,000,000 of residential real estate loans (which amounted to 40% of its total loans and discounts, 20% of its total assets, and from which it derived 26% of its total interest income), \$19,000,000 of these loans (2,934 in number) were made by appellant bank during 1952, as compared to \$97,000,000 of such loans held by savings and loan associations located in cities where appellant bank operated, \$35,000,000 of which loans (6,498 in number) were made during 1952.

(c) All national banks in Michigan held \$301,000,000 of such residential real estate loans, which amounted to 30% of their total loans and discounts, as compared to \$432,000,000 of such loans held by all savings and loan associations in Michigan.

The Michigan Supreme Court recognized that appellant "introduced proof that the loaning of money on the basis of mortgages secured by residential real estate, was a substantial phase of its business," and the Court summarized such proof (358 Mich. 611, 617).

More compelling than the statistics is (a) the unqualified admission by the managing officers of the savings and loan associations that appellant national bank was and is their principal competitor⁵ in the residential mortgage loan busi-

⁵R. 108a-109a, 203a-204a, 259a-260a, 291a, 384a, 439a, 479a, 515a, 576a, 601a-602a, 611a, 619a-620a, 629a, 648a.

ness^a in the localities where each operated, and (b) similarly, the testimony of officers of appellant bank that the savings and loan associations were its principal competitors for such mortgage loan business. Those who knew best—the actual competitors themselves—recognized that the other was its principal competition in the residential mortgage business.

Nationally, all savings and loan associations in 1952 held over 30.2% of the total mortgage debt of \$58,500,000,000.

The extent and substantiality of the competition between national banks (including appellant) and savings and loan associations is graphically illustrated by the chart on the following page.

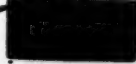
^aVirtually all of the Bank's residential loans involved the exchange of new money for a mortgage, rather than the giving of a mortgage to secure a pre-existing indebtedness (R. 613a, 614a, 619a, 636a, 640a, 647a) and were amortized on a monthly basis (R. 432a, 547a, 566a, 613a, 614a, 617a, 628a, 647a). The other terms and conditions of their real estate loans were substantially identical to those of appellant bank. In each community where appellant did business, both appellant and the savings and loan association or associations there located charged comparable interest rates (R. 219a, 221a, 259a, 289a, 300a, 381a, 430a, 487a, 488a, 511a, 546a-547a, 562a, 564a, 605a, 617a, 618a, 627a, 637a, 646a; Exhibit 72, pp. 30, 57; Exhibit 73, p. 44; Exhibit 77, pp. 20, 33; Exhibit 79, p. 58), made mortgage loans in the same comparable ratio to the value of the property mortgages (R. 566a, 567a, 606a, 607a, 609a, 617a, 618a, 627a, 639a, 646a; Exhibit 63, p. 29; Exhibit 77, p. 39; Exhibit 106, Exhibit 107, Exhibit 108); made mortgage loans substantially comparable as to term of years (R. 488a, 546a, 590a, 606a, 609a, 617a, 618a, 627a, 638a, 639a, 646a; Exhibits 106, 107 and 108); and received mortgages with comparable rights and liabilities (R. 326a).

Residential Mortgage Business

— 7 Cities Where Plaintiff Bank Operates —

1952

\$83,000,000



Michigan National Bank
(Exhibit 3)

(Including \$8,000,000 F.H.A. home modernization loans)

\$87,000,000



16 Savings & Loan Associations
(Exhibits listed below)*

— State of Michigan —

1952

\$301,000,000



All National Banks
(Exhibit 103)

\$438,000,000



All Savings & Loan Associations
(Exhibit 6)

— United States —

1952

All National Banks

\$ 6,516,000,000



(Exhibit 220)

All Savings & Loan Associations

\$ 12,336,000,000



(Exhibit 14)

1957

\$ 9,436,000,000

(Exhibit 10)

\$ 19,110,000,000

(Exhibit 10)

★ (Exhibits: 36A, 36C, 36E, 36E, 36G, 36I, 36J, 45F, 57F, 61F, 73E, 77E, 81E, 87, 92.)

The Highest Banking Official of the United States Government, the Comptroller of Currency, fully recognizes the "increasing importance" of savings and loan associations' competition with banks.

Considering the extent of competition faced by banks, the Comptroller of Currency of the United States recently testified before Congress:

"... banks are finding themselves more and more in competition with other types of bank and nonbank financial institutions. Among the other types of financial institutions competing with commercial banks are ... Federal and State chartered savings and loan associations ..."⁷

The Comptroller then placed into the record an address of L. A. Jennings, Deputy Comptroller of Currency, of May 27, 1959, on the subject of "Competition in Commercial Banking," (see also Congressional Record of June 18, 1959) in which the Deputy Comptroller, among other things, stated:

"Federal and State-chartered savings and loan associations are zealous and highly effective competitors for the funds of savers and for real estate mortgage loans ...

"... they maintain fully invested positions in real estate mortgage loans ..."

The Comptroller concluded:

"It is our view that any failure to take into consideration competition from other types of financial institutions when considering the subject of bank competition would indicate serious lack of knowledge of basic factors important to banking today and disregard of the elements that go into a determination of the competitive situation in which commercial banks function."

⁷Hearings before Subcommittee No. 2 of the Committee on Banking and Currency, House of Representatives, Eighty-Sixth Congress, Second Session, on S. 1062—February 16, 17, and 18, 1960, p. 7.

3.

The competing moneyed capital of savings and loan associations is "substantial when compared with the capitalization of national banks."

This third element of the test under R. S. 5219 has been held by this Court to be implicit in the statute.

"... §5219 is violated wherever capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business." *First National Bank of Hartford v. City of Hartford*, 273 U.S. 548, 558; 71 L. Ed. 767.

It is undisputed that other moneyed capital invested in all savings and loan associations in Michigan in 1952 (in excess of \$468,000,000) (Ex. 221) was approximately three times the total capitalization of all national banks in Michigan (\$166,724,000) (Ex. 103), and such other moneyed capital in associations located in the cities where appellant operated (\$134,438,000) (Ex. 209) was approximately ten times the capitalization of appellant bank (\$13,038,000) (Ex. 3).

Nationally, in 1952, the moneyed capital represented by shares in savings and loan associations amounted to \$20,853,000,000 (Ex. 224) as compared with \$7,059,000,000 (Ex. 224), the capitalization of all national banks.

UNDER THE CONTROLLING DECISIONS OF THIS COURT, ACT 9 IS INVALID AND IN CONFLICT WITH R. S. 5219.

Where, as here, substantial amounts of moneyed capital are invested in and employed by savings and loan associations in direct competition with a substantial phase of the business of appellant and other national banks, to-wit: the business of making loans on residences and other real estate

in the same localities, the case, we submit, is wholly concluded by the following decisions of this Court, next discussed.

First National Bank v. Hartford, 273 U.S. 548; 71 L. ed. 767, went into so many features of the matter both of law and of fact that a rather lengthy discussion of the case seems imperative. The suit was to recover the tax on a national bank's shares for the year 1921. This Court found that it was apparent that the ad valorem tax imposed upon national bank shares was at a greater rate than the income tax imposed upon credits and intangibles, but the Court further held:

"... it is not sufficient to show this discrimination alone."
(552)

The Court carefully pointed out that:

"The validity of the tax complained of depends upon whether or not the moneyed capital in the state thus favored is employed in such a manner as to bring it into substantial competition with the business of national banks." (552)

This was the question discussed and decided in the case. The Court concluded in *Hartford* that:

"Competition may exist between other moneyed capital ... within the purpose of §5219, even though the competition be with some but not all phases of the business of national banks. Section 5219 is not directed merely at discriminatory taxation which favors a competing banking business. (557)

"... Our conclusion is that §5219 is violated wherever capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business."
(558)

The nature of the evidence considered by this Court in reaching this conclusion was as follows:

"The evidence shows that plaintiff in the course of its business receives deposits, loans money, has a savings department, deals in exchange, buys and sells notes, government and other bonds, discounts commercial paper and acquires real estate mortgages by loan and purchase...

"There are real estate firms engaged in lending money to individuals in the vicinity of plaintiff's banking house, the amount thus loaned amounting annually from \$250,000 to \$300,000. * * *. And similar conditions obtain throughout the state. There are various individuals, co-partnerships and corporations in the vicinity engaged in the business of acquiring and selling notes, bonds, mortgages and securities. Substantial capital is employed in their business." (553).

"* * * it affirmatively appears from the evidence, that there are individuals, firms and corporations in Wisconsin, not required by its laws to be incorporated as banks, engaged in the business of loaning money on the security of notes, bonds, and mortgages, and buying and selling securities, all involving investment and reinvestment by them and their customers. Through the activities of these business concerns, large investments are made and remade in such securities. Large amounts of capital are thus employed in some of the ordinary banking activities although these individuals and firms do not receive deposits..." (555)

The Wisconsin Court there, like the Michigan Court here, denied recovery construing the decisions of this Court "as requiring equality in taxation only of moneyed capital invested in businesses substantially identical with the business carried on by national banks." (555)

This Court, rejecting that construction of R. S. 5219, said:

"Under this [the Wisconsin Court's] view, if logically pursued, capital invested in businesses engaged in some but not all of the activities of national banks * * * could not be considered in determining the question of competition . . ." (556).

"The restriction applies as well where the competition exists only with respect to particular features of the business of national banks or where moneyed capital 'is employed, substantially as in the loan and investment features of banking, in making investments by way of loan, discount or otherwise, in notes, bonds or other securities, with a view to sale or repayment and reinvestment' . . ." (556).

"Here, large amounts of capital are shown to be invested in businesses carried on throughout the state which are of the same character as some though not all of the business carried on by national banks. In two fields at least, loans and sales of credits, capital thus employed is shown to be in substantial competition with that of national banks . . ." (558-9).

"It is enough as stated if both engage in seeking and securing in the same locality capital investments of the class now under consideration which are substantial in amount . . ." (559).

"plaintiff is shown to have investments in real estate mortgages and to be engaged in selling them . . . To that extent the business of acquiring and selling such mortgages and evidences of debt, carried on by numerous individuals, firms, and corporations in Wisconsin, comes into competition with this incidental business of national banks" (560).

Most pertinent are statements in *Hartford* at p. 557, lines 25-34; and p. 558, lines 2-21, quoted *infra*, pp. 22-3, holding that "manner of employment" of other moneyed capital and "not . . . character of the business" determine the question of competition with national banks under R. S. 5219.

To the same effect, and decided on the same day as *Hartford*, is *Minnesota v. First National Bank*, 273 U.S. 561; 71 L. Ed. 774, in which this Court said:

"... the competition guarded against by §5219 ... may arise from the **employment of capital** invested by institutions or individuals in **particular operations or investments** like those of national banks." (567).

First National Bank v. Anderson, 269 U.S. 341; 70 L. Ed. 295, reversed a judgment of the Iowa Supreme Court, which had dismissed the bank's petition. The case stated in the petition is summarized at page 351:

"Some of these [allegations] are directly to the effect that the tax on the shares was computed at the rate of one hundred and forty-three and five-tenths mills on the dollar, while that on notes, mortgages and other evidences of indebtedness, 'such as normally enter into the business of banking' and representing moneyed capital of individual citizens 'engaged in competition' with the bank, was computed at five mills on 'the dollar' (351).

The amount taxable at five mills was alleged to be approximately \$5,000,000. This Court, holding that the state tax violated R. S. 5219, reviewed the earlier decisions and summarized the same in four numbered paragraphs, pages 347 and 348, holding that:

"... every clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks is a violation of both the letter and spirit of the restriction..." (348).

The addition to R. S. §5219 by the Act of 1923 of the words "coming into competition with the business of national banks," etc. were discussed and it was said:

"* * * the reenactment did no more than to put into express words that which, according to repeated decisions of this Court, was implied before" (350).

In *Merchant's Nat'l Bank v. Richmond*, 256 U.S. 635; 65 L. Ed. 1135, the City of Richmond (Va.) assessed national bank shares for the year 1915 at \$8,000,000, state banks and trust companies at \$6,000,000 and "bonds, notes and other evidences of indebtedness" at \$6,250,000. The latter were taxed at a lower rate than the bank shares. The Virginia Court held that, there being no difference in the tax rate on state and national bank shares, the lower rate on the other class was immaterial. This court said:

"* * * It is to be inferred that a substantial part of this aggregate was in the hands of individual taxpayers; the precise amount does not appear. It also was shown by evidence without dispute that moneyed capital in the hands of individuals invested in bonds, notes, and other evidences of indebtedness comes into competition with the national banks in the loan market." (638).

The Court then reviewed and restated the rulings as to what is meant by moneyed capital, page 639, second paragraph, and 641 beginning with line 7. The essence of the decision is:

"... while the words 'moneyed capital in the hands of individual citizens' do not include shares of stock in corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into direct competition with those banks. They include not only moneys invested in private banking, properly so called, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter into the business of banking." (639)

The Richmond tax was held by this court to be in violation of R. S. 5219 and the judgment of the Virginia Supreme Court was reversed.

To the same effect see *Public National Bank of New York v. Keating, et al.*²² (CCA 2, 1931), 47 F. 2d 561; affirmed Per Curiam, *Keating v. Public National Bank*, 284 U.S. 587; 76 L. Ed. 507. The rules of *Hartford* and *Minnesota* were well summarized—insofar as is here applicable—by the Second Circuit Court of Appeals, 47 F. 2d 561, 564.

THE DECISION OF THE MICHIGAN SUPREME COURT IS IN DIRECT CONFLICT WITH THE CONTROLLING DECISIONS OF THIS COURT AND WOULD NULLIFY R. S. 5219 AND MAKE IT IN-OPERATIVE.

The Michigan Supreme Court made three basic errors in its decision.

1.

The Michigan Supreme Court erred in holding that as a matter of law savings and loan associations cannot be in competition with the business of national banks because they are "different in character, purpose and organization from national banks" and operate "in a narrow, restricted field."

The Michigan Supreme Court quoted (358 Mich. 611, 618) and considered:

"Defendants summarize their position as follows:

"In the last analysis, savings and loan associations cannot be in "substantial competition with the business of national banks" because they cannot and do not engage sufficiently in the activities characteristically carried on by the national banks. Stated another way, if they are not comparable institutions in substance, how can they be in substantial competition?" "

Notwithstanding the proven fact of competition by savings and loan associations with a substantial phase of the business of appellant and other national banks in the state, the Michigan Court concluded (639) that:

"Michigan building and loan associations operated in a narrow, restricted field, are markedly different in character, purpose and organization from national banks, and are not in 'substantial competition' with national banks."

The Michigan Court's conclusion followed the above quoted summary of appellees' position based on their contention that banks receive deposits and engage in all activities of the banking business, of which the loan of moneys on residential mortgages is but one phase [even though over 40% of appellant's total loans]; whereas, savings and loan associations are not permitted to "accept deposits" or to "do a banking business," and their business is limited "solely in the narrow activity of making first mortgage loans secured by residential properties..." (618).

The same argument was made and followed by the Wisconsin Supreme Court in *Hartford*, but was explicitly rejected by this Court (273 U.S. 548; 71 L. Ed. 767). This Court recognized that:

"Large amounts of capital are thus employed in some of the ordinary banking activities although these individuals and firms do not receive deposits." (555),

but, nevertheless, held:

"... this Court has recently had occasion, in reviewing the earlier decisions dealing with this subject, to point out that the requirement of approximate equality in taxation is not limited to investment of moneyed capital in shares of state banks or to competing capital employed in private banking. The restriction applies as well where the competition exists only with respect to particular features of the business of national banks . . . (556)"

"Competition may exist between other moneyed capital and capital invested in national banks, serious in character and therefore well within the purpose of §5219, even though the competition be with some but not all phases of the business of national banks . . . Competition in the sense intended arises not from the character of the

business of those who compete but from the manner of the employment of the capital at their command . . . (557)

" . . . With the great increase in investments by individuals and the growth of concerns engaged in particular phases of banking shown by the evidence in this case and in *Minnesota v. First National Bank of St. Paul* . . . [273 U.S. 561, 567], discrimination with respect to capital thus used could readily be carried to a point where the business of national banks would be seriously curtailed. Our conclusion is that §5219 is violated wherever capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business." (558).

To the contrary, the Michigan Supreme Court concluded that because the savings and loan associations were not banks of deposit, R. S. 5219 was not violated, saying (358 Mich. 611, 635):

"The fundamental difference between a bank making loans from deposits and loans made otherwise, was recognized in *First National Bank of Shreveport v. Louisiana Tax Commission* (1933), 289 U.S. 60; 77 L. Ed. 1030."

In *Shreveport* this "difference" was relied upon solely to show an "ample basis for classification" to meet one challenge of the bank, that the equal protection clause of the Fourteenth Amendment had been violated (64). This difference in character or source of the moneyed capital, however, was not considered by this Court as a defense to the other challenge of the bank, that R. S. 5219 had been violated. The Court held that "fact" of competition was the controlling test. In *Shreveport* the record clearly showed that "there was no competition with the national banks on the part of any concern lending money on mortgages of real estate; because national banks will never handle such loans" (66) and, therefore, R. S. 5219 was not violated; whereas the record in the case at bar clearly proves competition and violation of R. S. 5219.

If the reasoning of the Michigan Supreme Court is carried to its logical conclusion, it would mean that R. S. 5219 would apply solely to state banks, the only institutions which are substantially identical to national banks and are similar in "character, purpose, and organization" to national banks. To so confine R. S. 5219 would be contrary to *Merchant's National Bank v. Richmond*, supra, and also to the 1923 amendment to R. S. 5219 as it has been consistently construed by *Hartford* and other post-1923 cases. It would, in fact, restrict R. S. 5219 in a manner which Congress has consistently refused to do, despite repeated proposals.⁸

Clearly, therefore, under *Hartford* and *Minnesota*, a state may not exempt or prefer savings and loan associations as a matter of law because they are engaged in some but not all of a national bank's activities, or because they operate in a so-called "narrow, restricted field," or have a different character and purpose, when the proven facts are that:

1. Residential mortgage loans amounted to 40% of appellant bank's total loans, 26% of its income and 20% of its total assets.
2. All national banks in Michigan held \$301,462,000 of residential loans amounting to 30% of their total loans and discounts.
3. The moveyed capital employed by such associations is three times the capitalization of all national banks in Michigan.

⁸Proposals to limit state taxes on national bank shares to that imposed on shares of state banks—thus permitting other competing moneyed capital to be taxed at lower rates by the states—have been rejected by Congress since 1923. Hearings before Senate Banking and Currency Committee, on S. 1573, 70th Cong., 1st sess. (1928), pp. 2, 476. Hearings on H. R. 8727 before the House Committee on Banking and Currency, 70th Cong., 1st sess., 1928, pp. 1, 1124 (after *Hartford*); S. 3009, 1934 Congressional Record, 73rd Cong., 1st sess., p. 4041; H.R. 9045, 1934, Ibid., pp. 6375, 10294 (after *Shreveport*).

2.

The Michigan Supreme Court erred in substituting a different test of discrimination than that prescribed by R. S. 5219 for a tax on shares.

Act 9 is a tax on shares of national banks. Under R. S. 5219, Sec. 1 (a), such a tax is in lieu of the other three methods permitted to a state taxing national banks or their shares. Sec. 1 (b) specifically provides the test and standard of tax equality and enjoins the state as follows:

"Sec. 1 (b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital [shares in savings and loan associations] in the hands of individual citizens of such State coming into competition with the business of national banks..."

Under Act 9, the State of Michigan imposed a tax on shares of national banks at the rate of \$5.50 per \$1,000, based on their capital accounts (capital, plus surplus and undivided profits).⁹ In comparison, the State taxed shares of savings and loan associations at the rate of \$.40 per \$1,000 of paid-in capital (excluding surplus, undivided profits and reserves).¹⁰ In addition, state savings and loan associations—but not federal—were subject to an annual privilege tax of \$.25 per \$1,000 of capital and legal reserves (excluding surplus and undivided profits).¹¹ Both banks and savings and loan associations were subject to ad valorem real property taxes at

⁹C. L. '48, Sec. 205.132a (1953 Supp.); M.S.A. 7.556 (2a).

¹⁰C. L. '48, Sec. 205.132; M.S.A. Sec. 7.556.

¹¹C. L. '48, Sec. 450.304a, M.S.A. Sec. 21.206.

The associations get their right to do business from the state and the state levies a tax "upon the privilege of exercising corporate franchises." M.S.A. 21.205 as amended by Act 183 of 1952. Plaintiff Bank obtains its "privilege of exercising corporate franchises" from the U.S. and the State has no basis for charge therefor. Therefore, the amount of the franchise taxes should not even be included in determining the comparative tax rates on shares of the respective institutions.

the same rate. The only other state taxes imposed upon a few—but not all—savings and loan associations, and not imposed upon banks, are inconsequential.¹² See Ex. 208.

Clearly, therefore, Act 9 imposes a tax on shares of national banks at a rate more than 8 times greater than the tax on domestic savings and loan association shares (\$5.50 per thousand compared to 65 cents per thousand), and more than 13 times greater than the tax on federal savings and loan association shares (\$5.50 per thousand compared to 40 cents per thousand).

Notwithstanding the proven discrimination, the Michigan Court (358 Mich. 611, 633) makes a comparison of the total tax burden (of all kinds of levies) on the total assets—without deducting liabilities—of Michigan National Bank and of savings and loan associations and finds the same .089 for associations and .091 for the Bank and also finds that the

¹²The following taxes are called to the Court's attention solely for the purpose of completeness:

Savings and loan associations were subject to a tangible personal property tax (C. L. '48, Sec. 211.8, et seq.; M.S.A. Sec. 7.8, et seq.) to which national banks were not subject. However, the tax paid, if any, was insignificant. (Six of the associations located where appellant operates paid no personal property tax. The largest amount paid by any such association was less than \$500.00.)

Sec. 3 of Act 183, P.A. 1952 (C. L. '48, Sec. 450.303; M.S.A. 21.203) imposed a franchise tax on domestic savings and loan associations of 1/10 mill upon their authorized capital. However, this tax is paid only at the time the articles of incorporation are filed or upon an increase in authorized capital stock. It is not an annual tax. During the year 1952, only one association doing business in a city in which plaintiff bank operated (East Lansing Savings and Loan Association) paid such a tax (\$600.00).

Section 2 of the Intangibles Tax (Act 301 of the Public Acts of 1939, as amended) levied a tax at the rate of 1/25 of 1% on bank deposits as of December 31, 1952. The tax paid by appellant bank pursuant to this statute for the year 1952 was \$100,318.24 (Exhibit 1).

Intangibles Tax in relation to total assets is .02243 for associations and .02459 for the Bank. This comparison is not proper nor permitted by R. S. 5219.

The tax imposed by Act 9 is "on said shares"—which this Court has held to mean assets after deducting all liabilities—not gross "assets of the bank without deduction of its liabilities," *Minnesota v. First National Bank*, 273 U.S. 561, 564; 71 L. Ed. 774; *Des Moines National Bank v. Fairweather*, 263 U.S. 103; 68 L. Ed. 191. As this Court said in *Minnesota* (p. 564):

"... it is urged, if bank shares were taxed at the same rate without deducting the bank's liabilities in ascertaining the value of their shares, the amount of the tax would be approximately the same. This argument ignores the fact that the tax authorized by §5219 is against the holders of the bank shares and is measured by the value of the shares, and not by the assets of the bank without deduction of its liabilities, *Des Moines Nat. Bank v. Fairweather*, 263 U.S. 103, (68 L. Ed. 191, 44 Sup. Ct. Rep. 23) and that the bank share tax must be compared with the tax assessed on competing moneyed capital of individuals invested in credits, or the tax on capital invested by individuals in the shares of corporations whose business competes with that of national banks ... (cases cited)."

The state can levy taxes in respect of national banks only in such manner and to such extent as permitted by act of Congress. Congress has not permitted and the state cannot levy a tax on total assets. The state cannot levy a tax on assets at all other than real estate. The state now comes along and says: "See how we have gotten around not being permitted to levy a tax on assets. We have levied a tax on bank shares which carries the same aggregate burden as a tax on total assets." As Congress has not permitted a tax on total assets, the use of total assets as a basis for comparison cannot be proper.

The Michigan Supreme Court, in considering Act 9, a tax on shares, has used a basis for comparison explicitly rejected by this Court.

Nor do the cases of this Court cited by the Michigan Supreme Court (358 Mich. 632), support a comparison of tax burden to assets (without deducting liabilities) explicitly prohibited by *Minnesota* and *Fairweather*. They merely stand for the proposition that where different methods of valuation are used, a difference in rate may not necessarily be discriminatory in a state tax on shares (cf. *People v. Weaver*, 100 U.S. 539; 25 L. Ed. 705); or, where a different method of taxation is used, if, when translated into the method employed in taxing national banks or its shares, there is approximate equality, discrimination under R. S. 5219 does not necessarily obtain (*Tradesmens National Bank of Oklahoma City v. Oklahoma Tax Commission*, 309 U.S. 580; 84 L. Ed. 947; *Covington v. First National Bank of Covington*, 196 U.S. 100; 49 L. Ed. 963).

3.

No doctrine of this Court permits a state to discriminate against national bank shares in favor of other moneyed capital employed under private management, for profit, in competition with a substantial phase of the business of national banks.

The remaining basic question is whether or not a state, for reasons of its own—notwithstanding R. S. 5219—may exempt from taxation or prefer

- (1) "other moneyed capital" (savings and loan shares);
- (2) clearly "coming into competition with [a substantial phase of] the business of national banks," and
- (3) "substantial when compared with the capitalization of national banks" in the state.

The lower Court erroneously concluded that the State of Michigan could do so (358 Mich. 611, 620, 639), notwith-

standing that no such exception is expressed in the statute, and that such a "partial exemption," if recognized, would defeat the purpose of the statute, i.e. the avoidance of discrimination against national bank shares in favor of huge amounts of other moneyed capital locally employed in competition with national banks.

The State asserts and the Michigan Court affirms the assertion that the difference between the rate of tax on national bank shares and shares of savings and loan associations in Michigan is a "partial exemption" of the latter, and hence justified. To indulge in semantics should not get one anywhere, and that is what the State does here. A difference in rate is a discrimination. Under the facts of this case, we submit, a state has no power to discriminate against national banks or their shares under a so-called doctrine of "partial exemption."

In reaching its conclusion that Michigan may exempt or prefer savings and loan associations or their shares, the Michigan Court relied upon eight cases of this Court, all decided prior to 1900, and two lower court cases:

(a) Three of these cases¹³ involved the exemption of property—not "**moneyed capital**," as that term has been defined since *Mercantile*, supra, pp. 9, 10—and therefore **not in competition** with the business of national banks;

(b) Three of these cases,¹⁴ including *Mercantile*, involved mutual savings banks which (i) were **not found in competition** with the **then** business of national banks;

¹³*Hepburn v. School Directors*, 23 Wall (90 U.S.) 480, 485; 23 L. Ed. 112; *Adams v. Nashville*, 95 U.S. 19, 22; 24 L. Ed. 369; *Boyer v. Boyer*, 113 U.S. 689, 693; 28 L. Ed. 1089.

¹⁴*Mercantile Bank v. New York*, 121 U.S. 138; 30 L. Ed. 895; *Davenport Bank v. Davenport Board of Equalization*, 123 U.S. 83, 86; 31 L. Ed. 94; *Bank of Redemption v. Boston*, 125 U.S. 60; 31 L. Ed. 689.

(ii) were publicly managed for public or quasi-charitable purposes; and (iii) were not privately operated, in "a commercial sense," for profit;

(c) Two of these cases¹⁵ are clearly not in point as they in no way involved the question presented by this appeal, except by way of dicta in reviewing prior cases (mentioned and distinguished under (a) and (b) above);

(d) The two lower federal court cases,¹⁶ *Hubbard* and *Hoenig*, involved savings and loan associations which were not in competition with the then business of national banks.

These cases, we submit, are inapposite.

The first three cases, as stated, involved property not "moneyed capital" as presently defined. When these cases were decided (1874-1885), the term "moneyed capital" was construed to include every type of intangible personal property and this Court, with that sweeping a definition in mind, simply affirmed the states' right to totally, not partially, exempt from taxation some property, such as municipal bonds, homesteads, the property of clergymen and the like—which was not in competition with the business of national banks. Competition was not then a factor and was not considered.

The next three cases decided in 1887 and 1888, involved, amongst other things, mutual savings banks. *Mercantile* introduced the present concept of "moneyed capital" and

¹⁵*Aberdeen Bank v. Chehalis County*, 166 U.S. 440, 460, 461; 41 L. Ed. 1069; *First National Bank of Wellington v. Chapman*, 173 U.S. 205, 214; 43 L. Ed. 669.

¹⁶*Mercantile National Bank of Cleveland v. Hubbard* (ND Ohio) 98 F 465, 471; *Hoenig v. Huntington National Bank of Columbus*, (CCA 6) 59 F 2d 479, 482, certiorari denied 287 U.S. 648; 77 L. Ed. 560.

was the first to consider "competition" as a factor. As to deposits in savings banks, this Court held such moneyed capital could be totally exempt without violating R. S. 5219 because:

"No one can suppose for a moment that savings banks come into any possible competition with national banks . . ." (121 U.S. 161).

That this is not so today, see *infra.*, p. 33, et seq.

Davenport held only that there was no discrimination between the tax imposed upon national bank shares and on savings banks in Iowa.

In *Bank of Redemption* (1888), decided one year after *Mercantile*, it was, however, urged by plaintiff bank that "... Massachusetts Savings Banks are permitted to transact a banking business in the way of loans upon personal securities,¹⁷ which assimilate them more closely to national banks" (125 U.S. 68) than to the savings banks involved in *Mercantile*. Without making any finding as to whether these investments were legally available to—or employed by—national banks, the Court summarily dismissed the point, saying (125 U.S. 68):

"But the difference mentioned, if it exists at all, is immaterial; the main purpose and chief object of savings banks, as organized under the laws of Massachusetts, are the same as those in New York, as considered in the case of the *Mercantile Bank*. They are substantially institutions, under public management, in pursuance of a

¹⁷This was one of the 8 classes of investments open to Massachusetts savings banks. It was, however, to be employed only "if the deposits cannot be conveniently invested in the modes heretofore named." These investments were moreover limited to not more than $\frac{1}{3}$ of the deposits in such banks, and required two sureties on such loans.

great and beneficial public policy, organized for the purpose of investing the savings of small depositors, and ~~not as banking institutions in the commercial sense of that phrase.~~"

The Wisconsin Court in *Hartford*, 187 Wis. 290, 203 N.W. 721, 727-9, (like the Michigan Court in the instant case), expressly relied upon the foregoing language from *Bank of Redemption*, supra, (as well as the so-called partial exemption cases relied upon by the Michigan Court in the case at bar) (203 N.W. 727-9), and the Wisconsin Court concluded that the "object" and "purpose" of building and loan associations, as well as other moneyed capital—regardless of manner of employment of capital—was the test of "competition" within the meaning of R. S. 5219. This partial exemption argument was also urged by the State in its brief before the Supreme Court in *Hartford* (pp. 37-42). Nevertheless, this Court reversed the Wisconsin Supreme Court's decision and specifically stated (273 U.S. 557) :

"Competition in the sense intended arises not from the character of business of those who compete but from the manner of the employment of the capital at their command."

To the extent, if any, that *Bank of Redemption*, supra, is contrary to this test, it is necessarily overruled by later decisions, particularly *Hartford*.

There is another important distinction between the early savings bank cases and the instant case involving present-day savings and loan associations. An institution managed and operated by **"public trustees"**¹⁸ solely to conserve the savings

¹⁸The character of the early savings banks is described by this Court in *Bank of Redemption v. Boston*, 125 US 60, in which the Court said :

"The institutions themselves, although corporations, have no capital stock and are managed by trustees, not selected by the depositors, but by public authority." (66)

of poor people can hardly be said to be using its moneyed capital in competition with national banks. As the Court recognized in *Bank of Redemption*, they were not "banking institutions in the commercial sense of that phrase" (68).

This Court in the early cases equated "deposits in savings banks"—publicly managed and operated to conserve funds of poor people, not for profit in the "commercial sense"—with "moneys belonging to charitable institutions." See *Aberdeen Bank v. Chehalis County*, 166 U.S. 440, 460-1; *First National Bank of Wellington v. Chapman*, 173 U.S. 205, 214.

Change in the manner of doing business by savings and loan associations and national banks since 1900 makes the early cases inapplicable.

In *Hartford*, this Court stated:

"Some of the cases dealing with the technical significance of the term competition in this field were decided before national banks were permitted to invest in mortgages as they now are. Act of December 23, 1913, c. 6, §24, 38 Stat. 251, 273; Act of September 7, 1916, c. 461, 39 Stat. 752, 754; Act of February 25, 1927, §24. And others go no further than to hold that in the absence of allegation and proof of competition with national banking capital, it cannot be said that an offending discrimination exists" (273 U.S. 558).

National banks did not have authority to make mortgage loans generally until the Act of September 7, 1916, and then the authority was very restricted. The restriction was substantially removed by the Act of August 23, 1935, Act of June 27, 1934, authorizing the making of F.H.A. mortgages, and Comptroller General's decision of 1944 authorizing the

making of V.A. (or G.I.) home loans. The first express mention by Congress of a national bank's right to accept "savings deposits" was in the Federal Reserve Act of 1913.¹⁹

It necessarily follows that cases involving the making by state institutions or others of mortgage loans or of accepting and investing savings deposits at a time when national banks did not have authority or were not exercising authority to do either are inapplicable to present day conditions.

The savings banks and building and loan associations of 1900 and earlier years were peculiar and unique quasi-charitable institutions, employing their moneyed capital exclusively for the sole benefit of "poor people" to aid them in "accumulating small savings" and/or in "building small houses." Each served a unique function not open to the national banks of their day.²⁰

¹⁹Such extensions of power have not been attacked except in *Franklin National Bank v. N. Y.*, 347 U.S. 373; 98 L. Ed. 767, where this Court said:

"That these federal institutions may be at no disadvantage in competition with state-created institutions, the Federal Government has frequently expanded their functions and authority." (375)

²⁰Savings banks were designed solely for persons of modest means, primarily the working classes: mariners, tradesmen, clerks, mechanics, servants and others. Until the advent of these banks of deposit, which operated under public management, there was no place where wage-earners could safely put aside some of their earnings for future needs. Prior to 1900, there was no savings feature in life insurance policies. Postal savings were not adopted until 1910, and **national banks could not accept savings deposits until 1913.** Investments by savings banks were strictly defined by statute. Usually they were permitted to invest in government securities of various types and in **real estate mortgages, primarily on residential properties, neither of which were in competition with national banks as they were then operated.** [Lintner, *Mutual Savings Banks in the Savings and Mortgage Markets*,

Judge Taft described the early building and loan associations in *Mercantile Nat. Bank v. Hubbard*, 98 F. 465, 471 as follows:

" * * * It seems to me that building associations are certainly not to be differentiated in their purpose or object, or practical effect, from savings banks, and that the capital invested in them, though subject to a somewhat different rule of taxation, cannot be regarded as moneyed capital in competition with the moneyed capi-

(Harvard University, 1948), Chp. II; *The Miracle of Mutual Savings, 1834-1934* (Bowery Savings Bank); *Mutual Savings Banking* (National Ass'n of Mutual Savings Banks, 1953); 4 McKinney's Consolidated Laws of New York, Secs. 230 et seq.]

Similarly, savings and loan associations of 1900 carried out a unique function by enabling "poor people" to set aside small savings to buy small homes. The **loaning of money on the security of residential real estate**, the sole object of the associations, was **not then permitted by national banks**. There was no distinction between the savings and borrowing members, both shared equally in the gains or losses of the associations. Both were required to make payments on the installment basis payable periodically in small amounts. Fines could be levied for nonpayment of installments when due. The result was enforced thrift. They were truly mutual in operation. Borrowers had to be subscribers to and investors in the capital stock of the association. The operations of the associations were confined to its members and **not open to the public**. Loans were the subject of competitive bidding restricted to the members at closed meetings. (Act 50 of P.A. of Mich. 1887). The investment in shares by partnerships, mercantile corporations or fiduciaries were in the early days deemed inconsistent with their purpose and prohibited:

"It certainly does not appear to be consistent with the purposes of a building association's being, nor in any wise related to the policy which justifies the creation of these institutions with the extraordinary powers they possess, to have its membership in part composed of corporations . . ." (Opinion of the Attorney General of Michigan 1903, page 58.)

tal in national banks, any more than is capital invested in savings banks. The chief object of building associations is to encourage the building of small houses by poor people, and the saving from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house."

And, in *Hoenig v. Huntington National Bank*,²¹ 59 F. 2d. 479, after referring to the *Hubbard* case the Court recognized that savings and loan associations were "created in answer to a need which the banks could not and did not satisfy . . ." (482).

The "just cause" or "just reason" language of the pre-1900 cases on which the Supreme Court of Michigan relies had to do with moneyed capital that was not employed in competition with the business of national banks and which was quasi-charitable, quasi-public in nature. Neither of these facts is here present. Today, the fact of competition in the employment of moneyed capital by savings and loan associations and national banks is beyond reasonable dispute.

²¹In *Hoenig* every banker who there testified was obliged to admit on cross-examination that:

"We have no direct loans on homes" (Archer);

"We do not fill that demand" (Huntington);

"As a rule we do not cater to them" (Stein).

(See *Hoenig* record, pp. 218, 220, 240, 251, 337).

The record in *Hoenig* shows that only $\frac{7}{10}$ of 1% of the plaintiff bank's loaning business in Columbus, Ohio, consisted of real estate mortgage loans. The Court held that national banks "do not . . . invest their funds generally in this manner" (59 F. 2d. 482). Cf *Shreveport*, supra, p. 23.

So, also, the modern association bears no real resemblance to its early predecessor.²² The associations of today are state-wide and even nation-wide in operation. Their moneyed capital is no longer obtained from or loaned to the poorer classes. Their savers and residential mortgage borrowers, like those of the modern banks, are the general public—every economic and income class of society. Savings and loan associations are no longer mutual. It is not now necessary that a savings investor be a borrower or that a borrower be a savings investor. The interest of each is independent of the other. The savings investor seeks only the highest rate of return consistent with the safety of his investment. The borrower seeks only the most advantageous mortgage terms. The borrowers are a separate group from the investors, with different and often conflicting economic interests. The borrower is undoubtedly unaware of the technical difference that exists between dealing with such associations and dealing with any other financial institution, such as a bank. Certainly, the associations in recent years do no more to encourage thrift or home ownership than do the national banks.²³

²²After the completion of plaintiff's case, the Trial Court, in denying defendants' (appellees') motion to dismiss, was impelled by the proof to observe that savings and loan institutions had changed—"at least the poor people angle is out of the picture." (669a)

The character of Michigan savings and loan associations having changed from 1887 (when they were exempt from taxation) (Act 50 P.A. of 1887; M.S.A. 23.558), Michigan now taxes savings and loan associations and their shares. The reason for exemption no longer obtains.

²³The modern national banks (including appellant), through their savings departments, actively encourage thrift among the same general public as the savings and loan associations; and actively promote, through their mortgage departments, home ownership among the same general public as the savings and loan associations by making residential mortgage loans on the same terms and the same security as do the associations.

To illustrate their recent size and strength, approximately one (1) out of every three (3) mortgages on all classes of residential real estate made in Michigan and in the United States in 1952 were made by such associations, and this ratio has steadily increased to over 40% at the present time.²⁴

The associations' growth picture has been dramatic. In 1900, all associations in the United States had total assets of only \$571,367,000 (Exhibit 221). By 1952, their assets had grown to \$19,200,000,000. In 1900, total assets of all Michigan associations equalled only \$10,118,000. By 1952, total assets had increased to \$537,695,000 (Exhibit 221), which figure almost equalled the total assets of all associations in the United States in 1900. At the end of 1959, the size of these financial institutions had reached the startling figure of \$63,472,000,000 in the United States, and \$1,679,000,000 in Michigan.

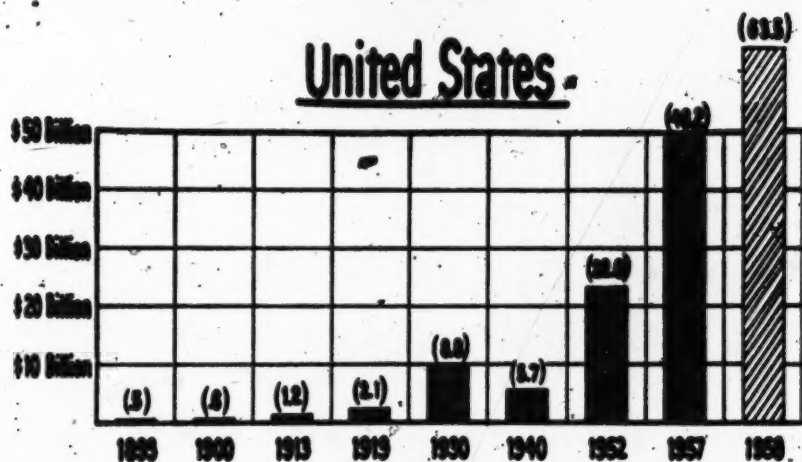
The growth of savings and loan associations—particularly since 1952—is illustrated by the following chart.

²⁴In view of the astonishing growth of savings and loan associations due largely to discriminatory tax advantages inuring to the competitive benefit of savings and loan associations as compared with banks, it is not surprising that Norman Strunk, executive vice-president of the United States Savings and Loan League, at the Annual Conference of the American Savings and Loan Institute at Chicago in March, 1960, predicted that by 1970 the assets of the business would be approximately \$165 billion as compared to \$65 billion at present, that savings and loan associations would be doing 55 per cent of all home financing as compared to 40 per cent today, and that several associations would be billion dollar institutions.

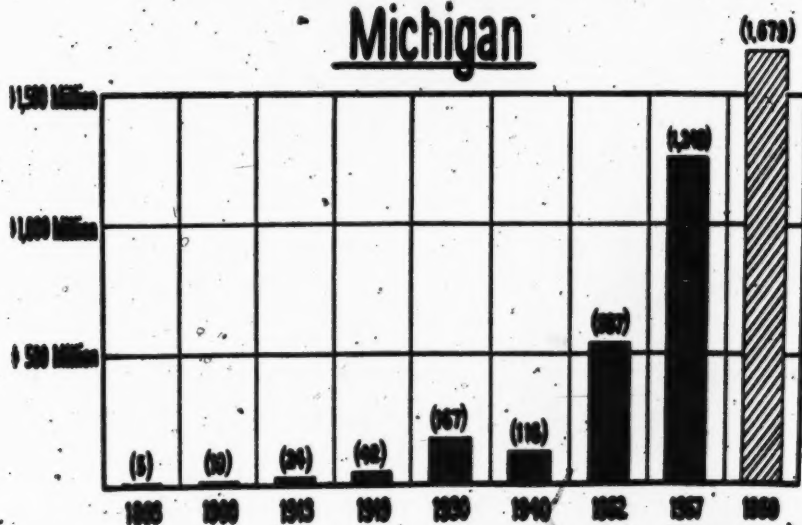
Moreover, Mr. Strunk in a forewarning to banks stated that "bank stockholders would be better served if the banks were to stop trying to attract savings deposits . . ."

Growth of Savings & Loan Associations Assets

United States -



Michigan



(Exhibit 221)

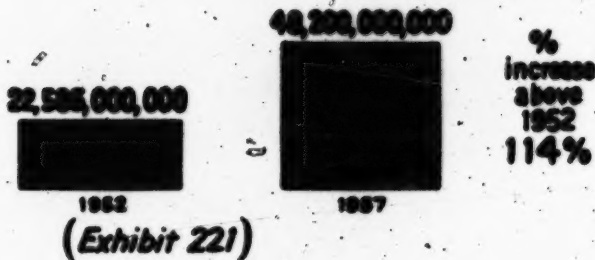
The shaded 1959 figures are not in Ex. 221, but appear in the monthly report of Federal Home Loan Bank Board.

Moreover, the growth of savings and loan associations in the United States from 1952 to 1957 (114%) has outstripped the growth of national banks (3%) during the same period. Stated in another way, the asset growth of savings and loan associations during that period was approximately \$25,600,000,000, as compared with the increase in assets of national banks of only about \$3,300,000,000, or about 8 to 1. See following chart.

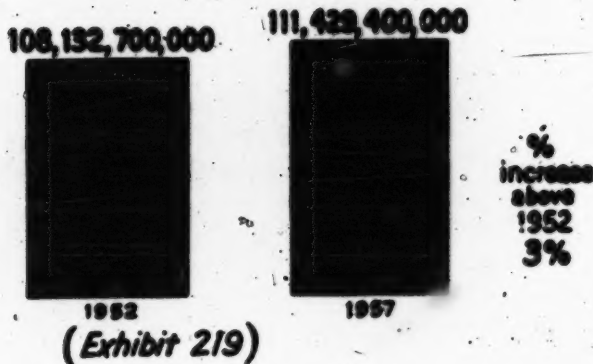
Growth of Savings & Loan Associations Compared to National Banks—United States

—Assets—

All Savings & Loan Associations



All National Banks



To favor savings and loan associations and their shareholders taxwise in the light of their ascendant growth and dominant position in the residential mortgage loan business is indefensible under R. S. 5219. No longer a small, poor man's institution with limited resources—but huge, powerful organizations aggressively competing for profit with important segments (residential mortgages and savings)²⁵ of the business of national banks—there is no just or valid reason why they should be exempted or favored.

R. S. 5219 does not prevent the states from taxing shares of national banks. It only provides that if such shares be taxed by the state, the tax must be on a basis of equality with other competing moneyed capital. The state does not suffer by this requirement. In the instant case, the state revenues would be increased if the present tax rate on national bank shares were maintained and the associations were similarly treated. In such event, savings and loan associations—on the basis of tax equality—would be required to pay at least 6

²⁵The more a taxing authority prefers savings and loan associations taxwise, the greater the margin of profit they enjoy over national banks in the competing area of residential mortgages. The more profit advantage they thus enjoy, the greater dividends they are enabled to pay to their shareholders. As a result, they have successfully advertised for and attracted increasingly greater amounts of surplus funds, which otherwise would have been put into savings accounts of national banks or invested in their shares. With these increasing amounts of moneyed capital (favored taxwise) thus obtained, the associations have had increasing resources to use in the competing residential mortgage loan business, while the national banks—thus competing at a disadvantage—lose in savings account resources which they would employ in the residential mortgage business and lose in earnings, which affect the value of their shares.

As was said in *Mercantile*: "A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden." (121 U.S. 138, 155)

million dollars a year more taxes to the State of Michigan—which they now escape.

This Court surely does not decide a case because of historical labels—no longer apposite in modern day society and economy. Principles are not blindly applied to completely different economic facts of life. An 1890 association is not a 1952 association except in name only.

As the late Justice Cardozo said in his treatise, "Nature of the Judicial Process" (page 81):

"Courts know today that statutes are to be viewed, not in isolation or *in vacua* * * * but in the setting and the framework of present-day conditions * * *"²⁶

Tax equality is the injunction of R. S. 5219. Under the compelling facts in this case, we submit that this Court should not permit the statutory safeguard against discrimination to be undermined or whittled away.²⁷

²⁶Citing: *Muller v. Oregon*, 208 U. S. 412; Pound, "Courts and Legislation," 9 Modern Legal Philosophy Series, p. 225; Pound, "Scope and Progress of Sociological Jurisprudence," 25 Harvard L. R. 513; cf. Brandeis, J., in *Adams v. Tanner*, 244 U. S. 590 [616]. See also *Holden v. Hardy*, 169 U. S. 366, 387.

See Oliver Wendell Holmes, "Collected Legal Papers," p. 187.

²⁷See pending case in Pennsylvania, in the Court of Common Pleas of Dauphin County, Pennsylvania, Equity No. 2395, No. 25, Commonwealth Docket, 1960; Mellon National Bank and Trust Company, The Philadelphia National Bank, Pittsburgh National Bank, Central-Penn National Bank of Philadelphia, Western Pennsylvania National Bank, The Union National Bank of Pittsburgh, The First National Bank of Erie, First National Pennsylvania National Bank and Trust Company, Easton National Bank, The First National Bank of Altoona, Northeastern Pennsylvania National Bank and Trust Company, Eastern National Bank and Trust Company, The National Bank of Boyertown, The Conestoga National Bank of Lancaster, Plaintiffs, v. Charles M. Dougherty, Secretary of Revenue, Defendant.

CONCLUSION

Wherefore, it is respectfully submitted that this Court has jurisdiction of this appeal under Section 1257 (2) of Title 28, United States Code.

D

Respectfully submitted,**Thomas G. Long****Victor W. Klein****Philip T. Van Zile, II,****Harold A. Buemenapp,****Attorneys for Appellant****MICHIGAN NATIONAL BANK****June 17, 1960**

APPENDIX A
Trial Court Opinion
January 20, 1959

Plaintiff, a national bank, seeks to recover the amount of \$49,929.27 paid by it under protest to the state. Such sum represented a deficiency assessed against plaintiff for the 1952 intangible tax pursuant to Act No. 9 of the Public Acts of Michigan for 1953 which amended the Intangible Tax Act (Act 301, Public Acts of 1939; M. S. A. 7.556(2a)) with respect to the taxation upon shares of the stock of national and state banks and trust companies.

It is settled law that:

“ ‘National banks are not merely private moneyed institutions, but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property and their shares cannot be taxed under state authority except as Congress consents and then only in conformity with the restrictions attached to its consent’. *First National Bank v. Anderson*, (269 U. S. 341). *Des Moines Bank v. Fairweather*, 263 U. S. 106.” *First National Bank v. Hartford*, 273 U. S. 548, 550.

See also:

People v. Weaver, 100 U. S. 539;

Talbot v. Silverpaul County, 139 U. S. 138;

First National Bank v. Adams, 258 U. S. 362.

Congress, by appropriate action, has permitted the taxation of shares in national banks subject to certain restrictions. This consent and the restrictions are now found in R. S. Section 5219, which reads in part:

“The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived

therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

"(b) In case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section." U. S. Code, Title 12, Section 548.

Plaintiff contends that the Michigan Intangible Tax Act fails to meet the requirements of Section 5219 in two particulars: (1) Michigan National Bank shares are taxed at a greater rate than other moneyed capital in the hands of individual citizens coming into competition with the business of the plaintiff bank, (2) that the Michigan Statute levies a tax upon "the privilege of ownership" of shares in national banks, that this is not the legal equivalent of a tax upon the shares in such banks and is not one of the alternate methods of taxation permitted.

Certain other national banks have intervened in the cause asserting that they similarly paid under protest the taxes levied under the amended Intangible Tax Act and seek to recover the amounts so paid. For the purpose of expediting the determination of the legal questions, the intervener action by order of the Court was separated from the trial of the plaintiff's case. The proofs introduced related solely to plaintiff's case and the decision to be made upon this record will adjudicate only that case.

Initially, the moneyed capital alleged by plaintiff to be in competition with it and to be taxed at a lesser rate included building or savings and loan associations, insurance corporations, credit union, finance companies, and monies in the hands of individuals and partnerships.

Shortly before the commencement of trial, plaintiff abandoned its claim insofar as insurance corporations, credit unions, finance companies and individuals and partnerships were concerned and its counsel stated that it would confine its case to the competition which national banks face in this state with building and savings and loan associations, both state and federal.

The institutions referred to are usually known as "building and loan associations" when organized under state laws, and as "savings and loan associations" when organized under the federal statute. The Michigan Statute is Act No. 50 of the Public Acts of 1887 as amended (M.S.A. 23.541 et seq.) and the Act of Congress is the Home Owners Loan Act of 1933 (U.S.C.A. Section 1464 et seq.)

Plaintiff has its principal banking office in the City of Lansing. It carries on the banking business in that city and in the Cities of Battle Creek, Flint, Grand Rapids, Marshall, Port Huron, and Saginaw.

In these cities there are sixteen building/savings and loan associations.

Without attempting to state in detail the proofs (the record consists of some 1750 pages of transcript, numerous depositions and some hundreds of exhibits), it may be said that plaintiff claims that the proofs bring the case within the rule stated in *First National Bank v. Hartford*, 273 U.S. 548:

"Competition may exist between other moneyed capital and capital invested in national banks, serious in character and therefore well within the purpose of § 5219, even though the competition be with some but not all

phases of the business of national banks. Section 5219 is not directed merely at discriminatory taxation which favors a competing banking business. Competition in the sense intended arises not from the character of the business of those who compete but from the manner of the employment of the capital at their command. * * *

To so restrict the meaning and application of §5219 would defeat its purpose. It was intended to prevent the fostering of unequal competition with the business of national banks by the aid of discriminatory taxation in favor of capital invested by institutions or individuals engaged either in similar businesses or in particular operations or investments like those of national banks. *Mercantile Bank v. New York*, supra 155. With the great increase in investments by individuals and the growth of concerns engaged in particular phases of banking shown by the evidence in this case and in *Minnesota v. First National Bank of St. Paul*, today decided (273 U.S. 561) p. 561, discrimination with respect to capital thus used could readily be carried to a point where the business of national banks would be seriously curtailed. Our conclusion is that §5219 is violated wherever capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business" (557-558).

"We do not conceive that in order to establish the fact of competition it is necessary to show that national banks and competing investors solicit the same customers for the same loans or investments. It is enough as stated if both engage in seeking and securing the same locality capital investments of the class now under consideration which are substantial in amount." (559).

In support of such claim, plaintiff offered a mass of statistical evidence as to the capital, assets, savings accounts, loans and investments of national banks, nationally, state-wide and of the plaintiff national bank. Like evidence was offered as to the business of the savings/building and loan associations, nationally, state-wide and in the seven cities in which plaintiff did business.

Plaintiff further offered the testimony of officers of the loan associations and of the plaintiff banks as to the existence of competition between the two types of institutions.

And plaintiff forcefully urges that such evidence establishes that both plaintiff and defendant make loans upon the security of mortgages on residential real property and that in that field there exists, in fact, substantial competition between the plaintiff bank and the several savings/building and loan associations.

Plaintiff further contends that the rate of tax levied against the shares of national banks is several times that levied against the shares of savings/building and loan associations.

Defendants take issue with plaintiff upon the existence of competition in fact, and upon the existence of discrimination in the rate of tax against the two types of institutions.

With reference to competition, in fact, defendants contend that the savings and loan association operating in the area of plaintiff bank are small institutions as compared to the plaintiff; that they function solely in a very narrow and restricted field compared to the varied activities of plaintiff and other national banks; that the savings and loan associations' basic organization and financial structure are so different from national banks that they cannot be compared with such institutions; that the alleged competing savings and loan associations concentrate their loans in conventional loan activity prohibited to plaintiff bank while plaintiff concentrated its loan activity in fields (F.H.A. and V.A.) not utilized by the savings and loan associations; that the proofs offered do not sustain a finding that the capital employed by savings and loan associations in 1952 represented a substantial portion of capital employed in any alleged competition by the savings and loan associations with the business of the plaintiff and other national banks; that plaintiff had no difficulty in obtaining all the capital it needed in 1952 and could not trace any part of its capital to any investments and

that in 1952 it loaned only its deposit money on security of real estate.

And defendant summarizes its position on this factual issue as follows: "in the last analysis, savings and loan associations cannot be in 'substantial competition with the business of national banks' because they cannot and do not engage sufficiently in the activities characteristically carried on by the national banks. Stated another way, if they are not comparable institutions in substance, how can they be in substantial competition?"

Upon the issue of discrimination, it is defendants' contention that the Michigan Intangible Tax from the standpoint of the economic impact, imposes an equivalent tax burden on national banks and savings and loan associations.

Defendants further present certain serious contentions of law which if decided in favor of defendants, make the determination of the above issues of fact unimportant. These, to a certain extent, overlap and may be briefly summarized: first, that the states have the power to give preferential tax treatment to thrift and home financing institutions such as mutual savings banks and savings/building and loan associations upon the ground of public policy without violating section 5219; and, secondly, that Congress by the enactment of the 1933 Home Owners Loan Act has made it clear that the provisions of section 5219 do not apply to savings/building and loan associations.

The banks of Michigan are not unanimous in this litigation.

The Michigan Bankers Association has been permitted to file a brief as amicus curiae in which it states the position of its members in these words:

"The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of

the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of the competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantage among the various types of institutions; and that it has proven to be simple to administer. Such a system is obviously desirable, and this Association, believing the system to be entirely legal within the limitations of the Federal Constitution and Statutes, does not want to see it destroyed."

And their counsel takes substantially the same position upon the several questions presented as does the Attorney General on behalf of the defendants.

Counsel for Michigan Savings and Loan League was likewise given permission to file a brief as amicus. He has not filed a formal brief, but he has by letter contributed to the discussion of the legal issues in this case, particularly with reference to the effect of the 1933 Act of Congress providing for the creating of Federal Savings and Loan Associations.

At the outset, the Court expresses its appreciation of the manner in which this case has been presented. Experienced and able counsel have diligently prepared their cases for trial and the proofs were introduced in an intelligent and effective manner. The briefs of counsel for the parties and for amici have forcefully and persuasively presented their respective views and contentions. What might have been drudgery, has, in fact, been an exceedingly interesting experience in which nearly a century of history of the financial life of the nation, of its legislation and its judicial decisions have been vividly portrayed. The decision of this Court will undoubtedly be appealed and it is believed that the record here made will be adequate to enable the Appellate Court or Courts to arrive at an answer to this question of importance to the states, the national banks and the saving/building and loan associations.

There can be found in the language of the numerous decisions since the passage of the legislation which is now Section 5219 support for the position of each party. To arrive at a correct conclusion as to the meaning of this section, it is necessary, I believe, to gather the intention of Congress in adopting the statute, in revising it in 1923 and 1926, in broadening the powers of national banks to make loans upon the security of real property, in adopting the 1933 legislation providing for Federal Savings and Loan Associations, and in adopting certain other legislation to which reference will be made. And in arriving at the intention of Congress, it is, of course, necessary to review the construction put upon the statute by the United States Supreme Court and by other courts to which the question has been presented.

I shall state my conclusions as briefly as the complexity of the question and a review of the legislative and judicial history of nearly one hundred years will permit.

Between the time in which Andrew Jackson served as President of the United States and the year 1863, the United States was without a national banking system. The conditions which existed in that year and which resulted in action by Congress were described upon the trial by Professor Woodworth, Professor of Finance at the School of Business Administration, in the University of Michigan, whose major field of specialization is money and banking. Mr. Woodworth said:

"I should say, sir, that the primary emphasis on monetary reform by the founders of the National Banking System grew out of the chaotic state of the currency during the period following the failure to renew the charter of the Second Bank of the United States in 1836 and extending to the establishment of the National System.

"Between one thousand and sixteen hundred state chartered banks issued notes of different designs and sizes, and worst of all these notes varied in value from worthless to part.

"Senator Sherman stated before the Senate that there were over seven thousand genuine kinds of notes in 1862 and some six thousand six hundred kinds of counterfeits. Mr. Sherman made that statement in a speech before the Senate February 10, 1863, quoted in the Congressional Globe, Part 1, 1862 to '63, page 84.

"Moreover, the notes of sound banks were discounted more and more heavily as they strayed farther from the point of redemption. Merchants had to subscribe to currently published bank note dictators listing values of notes and giving assistance in spotting counterfeits. Bank failures with their crippling losses to note holders and depositors were so numerous and widespread that public confidence in banks all but disappeared.

"For examples, there were 28 banks in Michigan in 1839, but by 1843 there were only 2, and in 1848 and 1849 there was only one bank; the number of banks in Ohio dropped from 37 in 1840 to 8 in 1844 and 1845; the 19 banks in Kentucky in 1851 were reduced to 4 in 1853; the number in Tennessee declined from 26 in 1838 to 1 in 1851-1857. These references are quoted from the Annual Report of the Secretary of the Treasury, 1876, pages 222 to 228.

"The lack of safety of banks was not only a drain on business and consumers, but was also a serious obstacle to Federal Government finance. Since the Treasury could not safely keep deposits in the banks, the Acts of 1840 and 1846 established an Independent Treasury System with subtreasuries in leading cities. Under these acts the treasury could receive taxes and other receipts only in specie and Treasury notes, and public funds had to be kept in its own treasuries.

"This arrangement caused periodic disturbance in the money and capital markets, owing to the periodic withdrawals and outpayments of specie reserves. In addition, the Treasury could not rely on the banks to assist in its debt management operations—that is, borrowing, redeeming securities, refunding securities, and so on.

"The founders of the national banking system contemplated that national bank notes would become the only

currency, aside from coins, as soon as the emergency issue of United States notes, popularly called the greenbacks, could be retired in the years following the Civil War."

The proceedings of Congress having to do with the adoption of the provision which was to become Section 5219 are described in "State Taxation of Banks—Woosley" as follows:

"The statutory genesis of the state taxation of national banks to be found in the National Bank Act of 1864. The original act of 1863 contained no provision authorizing the state taxation of national banks, but the debates on the revised measure were enlivened with this issue. Should the banks be subject only to federal taxation or to both federal and state taxation? If the latter, on what constitutional grounds might such taxation rest and by what methods and to what degrees should these banks be taxed by the states?

"In both houses of Congress there was a vigorous group which favored the exclusive taxation of national banks by the federal government, but in both bodies the advocates of joint state and federal taxation were victorious. After a number of proposals for state taxation were made in the House, that body passed a tax clause which permitted the states to tax the capital stock, other than that invested in federal bonds, to the same degree that the property of other moneyed corporations was taxed, with the further proviso that the capital, circulation, dividends or business of national banks might be taxed at no higher rate than that imposed by the state on moneyed capital in the hands of individuals.

"When the measure reached the Senate, the constitutional phases of the question were elaborately discussed. Senator Sumner of Massachusetts urged that the supremacy of the federal government was of such a character as to free these banks as agencies of that government from the potentially destructive taxes of states, citing the dictum of Chief Justice Marshall in *McCulloch v. Maryland*. The advocates of state taxation, while admitting that the court has held that the United States Bank and its operations were not subject to state taxation, contended that

such immunity did not apply to the shares. Mr. Fessenden of Maine urged that:

‘ . . . this opinion does not deprive the states of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State.’

“Senator Collamer drew a distinction between the institution and its shares which were the personal property of the shareholders and taxable as such at the situs of the shareholder. Senator Johnson of Maryland, who had heard the case argued before the court, interpreted the decision as declaring that the power of the State of Maryland to tax the shares of the United States Bank was an original power resident in the sovereignty of the state; that while a tax on the franchise or operations of the bank was held invalid by the court,

‘ . . . no judge though, and no member of the bar who argued the cause dreamed of denying that it would be in the power of the States to tax the property of their citizens invested in the stock of the Bank of the United States . . . and the Supreme Court closed their opinion, so as to exclude any conclusion which could be drawn as against the taxing power of the States on that point, by saying that it is to be understood that Maryland has the right, and every State in which there may be a bank of the United States, either the mother bank or a branch, has the right to tax the real estate which the bank may hold within that State, and to tax the shares of her citizens in that institution.’

“Therefore Senator Johnson concluded that the federal government lacked the power to exempt from state taxation the shares of bank stock invested in government bonds.

“In the end this view prevailed and the state tax clause of the Senate bill provided for the taxation of the market value of bank shares subject to the restrictions that the

rate imposed should not be higher than the rate on other moneyed capital in the hands of individual citizens nor higher than the rate on state bank shares. In the conference committee the Senate provision was adopted with slight changes and the measure became law on June 3, 1864."

The Act, as adopted, restricted the rate imposed by states upon the shares of national banks to that (1) imposed on other moneyed capital, and (2) imposed on state banks.

In 1868 the second limitation to the rate on state banks was dropped from the Act so that the Act then read, so far as the limitation was concerned:

"Provided that nothing in this Act shall be construed to prevent all the shares in any of the said associations held by any person or body corporate from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under state authority * * * but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state." (Woosley, 14).

This amendment was related primarily to the situs of taxation of bank shares and the elimination of the limitation to the rate imposed on state banks, was apparently without any particular significance.

There was no further substantial amendment to the Act until 1923, the only change in that period being that in phraseology incident to the general revision of the Federal Statutes in 1878.

Before 1923, at which time substantial amendments were made, many cases involving the meaning of Section 5219 were presented to the United States Supreme Court. If this opinion is to be limited to a reasonable length, reference to only a few of the cases can be made. The decision that has been most cited is *Mercantile National Bank v. City of New York*, 121 U.S. 138 (1887) and in the most recent decisions that case con-

tinues to be recognized as the leading case upon the interpretation of Section 5219.

In the opinion which was written about twenty years after the passage of the Act, the Court defines the object of the National Bank Act and the purpose of the section fixing limitation on state taxation and deals at length with the question presented in this case—the power of the State to exempt, in whole or in part certain moneyed capital without violating Section 5219.

The bill was filed to restrain the collection of taxes levied by the State of New York on the shareholders of a national bank and it was claimed that the State discriminated in its taxation against such shares in favor of insurance companies, trust companies, railroad companies, savings banks and other institutions. The Court first stated the purpose of the Act creating a National Banking System.

“The key to the proper interpretation of the Act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions in order to provide a uniform and secure currency for the people and to facilitate the operations of the Treasury of the United States.” (154).

The Court then considered the purpose of the limitation on the power of the State to tax:

“It was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the authority to tax them within the limits of a rule prescribed by the law. In fixing those limits it became necessary to prohibit the States from imposing such a burden as would prevent the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capital in the form of money might be invested and employed by individual citizens in many single and

separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character. The language of the act of Congress is to be read in the light of this policy."

At this time, the Statute did not contain the language "coming into competition with the business of national banks" which was added in 1923. However, the Court in the *Mercantile* case, defined the term then used "moneyed capital in the hands of individual citizens" to mean only such moneyed capital as was in competition with the business of national banks, concluding its discussion on this point with these words:

"Whether property interests in railroads, in manufacturing enterprises, in mining investments, and others of that description, are taxed or exempt from taxation, in the contemplation of the law, would have no effect upon the success of national banks. There is no reason, therefore, to suppose that Congress intended, in respect to these matters, to interfere with the power and policy of the States. The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. These are

the operations in which the capital invested in national banks is employed, and it is the nature of that employment which constitutes it in the eye of this statute 'moneyed capital.' Corporations and individuals carrying on these operations do come into competition with the business of national banks, and capital in the hands of individuals thus employed is what is intended to be described by the act of Congress."

As stated, the Mercantile Bank case has been cited with approval and followed by the United States Supreme Court in a large number of cases including the most recent on the subject. Thus, in *First National Bank v. Anderson*, 269 U.S. 341 (1926), the Court said:

"* * * The earlier decisions have been reviewed from time to time in later cases, and all, taken collectively, may be summarized as showing, so far as is material here—

"1. The purpose of the restriction is to render it impossible for any state, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks, by favoring shareholders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking. *Mercantile National Bank v. New York*, 121 U.S. 138, 155; *Des Moines National Bank v. Fairweather*, *supra*, 116.

"2. The term 'other moneyed capital' in the restriction is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks. *Mercantile National Bank v. New York*, *supra*, 157; *Aberdeen Bank v. Chehalis County*, 166 U.S. 440, 461."

The Court in the Mercantile case further passed upon the question of the power of the State to exempt certain property—moneyed capital invested in savings banks—upon the ground of public policy and without violating Section 5219. And it is upon this part of the opinion and upon later cases

involving savings banks that defendants rely in support of their contention that states may, without violating Section 5219, exempt or prefer moneyed capital invested in building and loan associations.

Because it is defendants' claim that building and loan associations are not different in their purpose, object or practical effect from mutual savings banks, it is appropriate at this point to briefly describe these latter institutions which were before the Court in the *Mercantile* and other cases to be cited. Professor Woodworth describes them in his testimony and they are to some extent pictured in the opinions in the Supreme Court to which reference will be made.

Mutual Savings Banks first appeared in this country in 1816. They had no capital stock, their funds came from savings deposits, they were operated by a board of trustees chosen in various manners, their "capital" consisted of their surplus and reserves above liability to depositors. In general, their funds were invested in financing home ownership. All earnings except those retained for surplus reserve went back to the depositors.

The *Mercantile Bank* case was not the first case in which the power of the State to exempt property on the ground of public policy was considered. In *People v. Commissioners*, 4 Wall. 244 (1866) the Court said:

"It is known as sound policy that in every well regulated and enlightened state or government certain descriptions of property and also certain institutions—such as churches, hospitals, academies, cemeteries, and the like—are exempt from taxation; but these exemptions have never been regarded as disturbing the rates of taxation even where the fundamental law had ordered that it should be uniform."

In *Adams v. Nashville*, 95 U.S. 19 (1877), a suit by stockholders of a national bank to enjoin collection of a tax, the Court said:

"The act of Congress * * * was not intended to cut off the power to exempt particular kinds of property if the legislature chose to do so."

In *Hepburn v. School Directors*, 234 Wall. 480, (1874), the Court said:

"It could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt. Certainly, there was no presumption in favor of such an intention."

In the *Mercantile Bank* case, decided in 1887, the Court sustained, as not violating Section 5219, an exemption of savings banks. In doing so, the Court said:

"In the case of savings banks, we assume that neither the bank itself nor the individual depositor is taxed on account of the deposits. The language of the statute (§4, c.456, Laws of 1857) is as follows: 'Deposits in any banks for savings, which are due to the depositors, . . . shall not be liable to taxation, other than the real estate and stocks which may be owned by such bank or company, and which are now liable to taxation under the laws of this State.'

"According to the stipulation in this case, the deposits in such banks amount of \$437,107,501, with an accumulated surplus of \$68,669,001. It cannot be denied that these deposits constitute moneyed capital in the hands of individuals within the terms of any definition which can be given to that phrase; but we are equally clear that they are not within the meaning of the act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must thereby also be exempted from taxation. No one can suppose for a moment that savings banks come into any possible competition with national banks of the United States. They are what their name indicates, banks of deposit for the accumulation of small savings belonging to the industrious and thrifty. To promote their growth and progress is the obvious interest and manifest policy of the state. Their multiplication cannot in any sense injuriously affect any legitimate enterprise in the com-

munity. We have already seen that by previous decisions of this court it has been declared that 'it could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt;' *Hepburn v. School Directors*, 23 Wall. 480; and that 'the act of Congress was not intended to curtail the state power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than like property similarly invested. It was not intended to cut off the power to exempt particular kinds of property, if the legislature chose to do so.' *Adams v. Nashville*, 95 U.S. 19. The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares."

It is to be noted that the Court gives two reasons for its holding. First, stating that savings banks do not come into competition with national banks and, secondly, stating that the statute was not intended to cut off the power to exempt particular kinds of property if the legislature chose to do so and if the exemption be founded on just reason and not operate as an unfriendly discrimination against investments in national bank shares.

The Court was to make clear which of these two reasons it considered the controlling one in later cases which came before it. A few months after the decision in the *Mercantile Bank* case, *Davenport Bank v. Davenport*, 123 U.S. 83 (1887) was decided. The decision in the case may be distinguished upon the ground that there was in fact no actual discrimination against national banks. The opinion of the Court is of importance because the Court which had decided the *Mercantile Bank* case, took occasion to state the reason for its decision in that case; the Court said:

"The whole subject has been recently considered by this court in the case of *Mercantile Bank v. New York*, 121 U.S. 138. In that opinion it was held that, while the

deposits in the savings banks of New York constituted moneyed capital in the hands of individuals, yet it was clear that they were not within the meaning of the act of Congress in such a sense as to require that because they were exempted from taxation the shares of stock in national banks must also be exempted. The reason given for this is that the institutions generally established under that name are intended for the deposits of the small savings and accumulations of the industrious and thrifty; that to promote their growth and progress is the obvious interest and manifest policy of the State; and, as was said in *Hepburn v. School Directors*, 23 Wall. 480, it could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt."

Less than a year later, the *Bank of Redemption v. Boston*, 125 U.S. 60 (1888) was decided and the opinion was written by Mr. Justice Matthews who had written the opinion in the *Mercantile Bank* case. Plaintiff bank alleged that the State of Massachusetts collected from national banks a tax of \$1,564,995.00 upon bank shares of 113 million dollars, while upon 163 million dollars of savings bank deposits it collected only \$815,930.00.

Plaintiff sought to distinguish the *Mercantile* case by the allegation that in Massachusetts, savings banks were permitted to transact a banking business in the way of loans upon personal securities "which assimilates them more closely to national banks and takes away the reason for the application of the rule to them which was applied to the case of the savings banks of New York."

The Court held that section 5219 was not violated, saying: "The question of exemption from taxation of deposits in savings banks as affecting the rule for state taxation of national bank shares was very diligently considered by this Court in the case of *Mercantile Bank v. New York*, 121 U.S. 138, 160; and the conclusion reached in that case was reaffirmed in the case of *Davenport Bank v. Davenport Board of Equalization*, 123 U.S. 83."

Answering the contention as to actual competition and the difference between the facts in New York and Massachusetts, the Court said :

"But the difference mentioned, if it exists at all, is immaterial; the main purpose and chief object of savings banks, as organized under the laws of Massachusetts, are the same as those in New York, as considered in the case of the Mercantile Bank. They are substantially institutions, under public management, in pursuance of a great and beneficial public policy, organized for the purpose of investing the savings of small depositors, and not as banking institutions in the commercial sense of that phrase. We adhere to the rule as declared in the cases heretofore decided, which forecloses further discussion as to the present point in this case."

I have not been cited, nor have I been able to find any subsequent decision of the United States Supreme Court which squarely involved discrimination in favor of savings banks. In two later decisions, however, the Court did recognize the validity of the rule of exemption stated in the cases which have been cited.

In *Aberdeen Bank v. Chehalis County*, 166 U.S. 440 (1896), the Court, referring to the Mercantile Bank case, said :

"As to savings banks it was held that, though it could not be denied that their deposits constituted moneyed capital in the hands of individuals, yet it was clear that they were not within the meaning of the act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must also be exempted; that it was part of the policy of the State to encourage the accumulation of small savings belonging to the industrious and thrifty, and it was within the reasonable exercise of the power of the State to exempt particular kinds of property, and the conclusion of the court, in respect to savings banks, was thus expressed." (Quoting from the Mercantile Bank case.)

And in *National Bank v. Chapman*, 173 U.S. 305 (1898),

the Court, after referring to the Mercantile Bank and other cases, said :

“* * * and that exemptions from taxation, however large, such as deposits in savings banks or monies belonging to charitable institutions which are exempted for reason of public policy and not as an unfriendly discrimination as against investments in national bank shares, cannot be regarded as forbidden by the Federal Statute (214).”

It is the claim of the defendants that building and loan associations are in the same class of institutions as savings banks. They are described at length in the testimony of Professor Woodworth. Because they will be described in the statutes and decisions to which reference will be made, I shall not summarize his testimony except to state his conclusions:

“Q. Now, referring to 1952, were savings and loan associations similar to national banking associations?”

“A. I should say they were not.

“Q. Were they similar to any other financial institution?”

“A. Yes, I should say savings and loan associations were quite similar to mutual savings banks.”

The power of the State to exempt or favor moneyed capital invested in the shares of building and loan associations had not been decided by the United States Supreme Court prior to the 1923 amendments to the statutes. It had, however, met judicial consideration in *Mercantile Bank of Cleveland v. Hubbard*, 98 Fed. 465 (1899). The opinion was written by Circuit Judge Taft who said; after citing *Bank v. Chapman*, 173 U.S. 205;

“I do not find that there was anything more of substance before the master than there was before the supreme court upon this issue of fact. There is proof of the capital in savings banks, and also of the capital invested in building and loan associations; but, under the decision of *Mercantile Bank v. City of New York*, 121

U.S. 138, 7 Sup. Ct. 836, 30 L. Ed. 895, capital invested in savings banks cannot be regarded as moneyed capital, within the meaning of section 5219, exemption of which from taxation can constitute a discrimination within the inhibition of that section. It seems to me that building associations are certainly not to be differentiated in their purpose or object, or practical effect, from savings banks, and that the capital invested in them, though subject to a somewhat different rule of taxation, cannot be regarded as moneyed capital in competition with the moneyed capital in national banks, any more than in capital invested in savings banks. The chief object of building associations is to encourage the building of small houses by poor people, and the savings from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house. The mere fact that every shareholder in a building association need not be a borrower cannot, I think, change the effect of the general purpose of the building association law. The general result of the evidence is no more satisfactory as showing what amount of discrimination, if any, there is by reason of this definition of 'credits' in the Ohio statute of taxation, than it was in the case of *Bank v. Chapman*. For this reason I must conclude, as the master did, that the averments of the bill as to the discrimination, arising from the operation of this definition of 'credits,' against money capital, is not such as to justify any action by the court in the complainant's favor."

This decision was before the Circuit Court of Appeals, 195 Fed. 809, and the United States Supreme Court in 186 U.S. 458 (under the case of *Lander v. New York Bank*), but in neither appellate court was the question of exemption of building and loan shares presented or decided.

This was the state of the case law with respect to the power of the state to exempt such associations as mutual savings banks and building and loan associations upon the ground of public policy when Congress amended section 5219 in 1923. I cannot escape the conclusion that at that time, it was established law that the state had the power to exempt on the

grounds of public policy insitutions of the general character of mutual savings banks without violating section 5219. The Court had so announced the law in the five cases which have been discussed. In no case had it overruled or disapproved the principles of those cases. And Judge Taft in the Hubbard case had applied the rule to building and loan associations and while this is not conclusive, counsel who took the case to the Court of Appeals and to the Supreme Court does not have appeared to have challenged his ruling as to building and loan associations in either of those courts.

In arriving at the intention of Congress in its adoption of the 1923 amendment to section 5219, attention must be given to the events which preceded and apparently provided the reason for such legislation.

In 1921 the Supreme Court decided *Merchants National Bank v. Richmond*, 256 U.S. 635, and held that the words "moneyed capital" included "not only monies invested in private banking, so-called, but investments of individuals in securities that represent money, the interest, and other evidences of indebtedness that normally enter into the business of banking."

The facts were that the State and city had taxed bank shares at \$1.75 per hundred dollars while bonds, notes and other evidence of indebtedness in the hands of individuals were taxed at the combined rate of ninety-five cents per hundred dollars. The Court held that section 5219 was violated.

The case did not involve building and loan shares or savings banks. The court in its opinion quoted with approval the Mercantile definition of moneyed capital, but did not discuss exemptions of such institutions on the ground of public policy.

The decision is said by Woosley (Page 53) to have imperiled share taxes in eight classified property tax states and in twelve other states which exempted moneyed capital from

the property tax and substituted therefor an income tax. Large numbers of suits were commenced by national banks and in some states the banks refused to pay taxes assessed against them.

Alarmed state officials inaugurated a movement to amend section 5219 and a bill was prepared and introduced in the House to permit states to tax shares of national banks or the income therefrom subject only to the restriction that the burden imposed should not be heavier than that levied upon capital invested in state banks or upon the income therefrom (Woosley, 53, 54). The ensuing proceedings are portrayed by the same author and may be read with interest.

It is sufficient here to say that it does not appear that at any time in any of the several proposals considered in the two Houses of Congress that there was an effort made to legislate against the power of the states to exempt savings banks, building and loan associations or other like institutions on the ground of public policy.

The bill that finally emerged as the law provided for three alternative methods of taxation of interest in national banks:

- (1) a tax upon shares;
- (2) net income tax on the banks;
- (3) tax on net income from dividends to owners of shares.

With respect to the tax upon bank shares, the language of section 5219 was amended to read that the tax shall not be at a greater rate "than is assessed upon other moneyed capital in the hands of individual citizens of such state *coming into competition with the business of national banks.*" (Emphasis added.)

Woosley, citing the Congressional record, states upon consideration of the amended House Bill which was to eventually pass the House and Senate and become the law, Representative Wingo declared:

"That the bill offered 'a tried simple rule that is well settled by a long line of judicial decisions with such additions to it as will clearly and more equivocably overule the Richmond decision.'"

While, as will be seen, Mr. Wingo proved a poor prophet as to the future effect of the legislation upon the Richmond decision, his statement is of interest upon the question of whether Congress had any intention of changing the rule of the Mercantile and other savings banks cases upon the power of the State to exempt such property on the ground of public policy.

The effect of the 1923 amendment came before the Supreme Court in *First National Bank v. Anderson*, 269 U. S. 341, decided in 1926. The Court there approved its holding in the Richmond case and said:

"The defendants say that this re-enactment was intended as legislative interpretation of the prior restriction and that the proceedings resulting in its adoption so show. But, assuming that this is true, the situation is not changed; for the re-enactment did no more than to put into express words that which according to repeated decisions of this Court was implied before."

And the court proceeded to quote from the Mercantile Bank opinion in its definition of moneyed capital.

"In 1926 the statute was again amended by adding the fourth alternative method of taxing national banks—that of imposing a franchise or excise tax and by permitting a tax on dividend income to be combined with either corporate or net income or franchise tax. This apparently was the result of an agreement between representatives of the banks and of the states and has no significance here (Woosley, page 63).

If it be accepted that by virtue of the decisions in the savings banks cases it had become established law that the states had power to exempt savings banks and like institu-

tions upon the ground of public policy, it is difficult to find in the history and language of the 1923 and 1926 amendment to section 5219 any evidence on the part of Congress to take from the states that power.

Certainly, the power of the states to grant exemptions on the ground of public policy was an important power. It had been recognized throughout the first fifty years of the life section 5219 and to terminate it would affect the validity of many state taxation systems. I am not persuaded that the intent to do so should be inferred from an amendment which does not mention the power and the passage of which was brought about by certain considerations having nothing to do with the existence of that power.

It is the further contention of the plaintiff that by reason of certain amendments to the Federal Reserve Act the power of national banks to loan money on the security of real property was greatly broadened, that the increased exercise of such power by the banks has resulted in substantial actual competition between national banks and other moneyed capital in the field of loans on residential property and that the Court recognized such competition in its decision in *First National Bank v. Hartford*, *supra*, and in *Minnesota v. First National Bank*, 273 U. S. 561.

The plaintiff has in its brief reviewed the legislation having to do with national bank loans on the security of real property as follows:

"An historical review of Section 24, Federal Reserve Act (12 U. S. C. 371), as amended (which prescribes the authority of national banks to make loans secured by real estate), reveals that prior to 1916, national banks were not authorized to loan money on the security of real estate, with the exception of certain farm land. By Act of September 7, 1916, the first grant of authority by Congress to loan on residential real estate was made to national banks. This enabled national banks to loan money on the security of improved real estate to

the extent of 50% of actual value for a term of no longer than one year. With the exception of the Act of February 25, 1927, which extended the term of said mortgages to no longer than five years, no material change was made in the national banks' authority to loan on the security of residential mortgages until 1934.

"In 1934 (Act of June 27, 1934), national banks were permitted to make mortgage loans under Title II, National Housing Act (12 U. S. C. 1701 et seq.), commonly described as F. H. A. mortgages. By Act of August 23, 1935, amending Sec. 24 of the Federal Reserve Act, national banks were authorized to make residential mortgage loans in the amount of 60% of the appraised value of the property for a term of ten years if 40% of the mortgage principal were amortized within ten years. By Comptroller General's decision of 1944, national banks became participants in the V. A. (or G.I.) home loan program.

"Accordingly, in 1952, national banks were authorized to make F. H. A. mortgage loans, V. A. mortgage loans, and liberal conventional mortgage loans."

First National Bank v. Hartford was decided in March, 1927. The Supreme Court in a suit by a national bank to recover the amount of tax assessed and collected upon its shares of stock reversed a judgment for the defendant and held that the Wisconsin statute was invalid as being in violation of section 5219. The Court summarized the evidence as to the alleged competing moneyed capital in the hands of real estate firms which loaned money, and in the hands of individuals, co-partnerships and corporations engaged in the business of acquiring and selling notes, bonds, mortgages and securities. The Court held that there was competition, in fact, with the business of national banks and stated its reasons therefor in the language previously quoted in this opinion. In the decision of the Wisconsin Supreme Court in the same case, (203 N. W. 721, 733-4), the matter of tax preference to building and loan associations was discussed and the Wisconsin Court insofar as such institutions was concerned

gave consideration to the savings bank cases and to the Hubbard case, but in the United States Supreme Court opinion, the Court, in its description of the competing capital involved, did not base its decision on any claimed competition between banks and such associations.

The Supreme Court did in the Hartford case cite with approval the Mercantile Bank case on three different occasions, but it did not consider or decide the matter of exemption by the states on the ground of public policy of savings banks, building and loan associations or other like institutions.

Nor did the Minnesota case, decided on the same day as the Hartford case, mention building and loan associations and the opinion does not discuss exemptions on the ground of public policy.

If the savings bank cases had been grounded on the lack of actual competition between those institutions and national banks, the argument of counsel that those decisions were no longer applicable because of the broadened powers of national banks would be persuasive, in those cases in which the banks had actually exercised those broadened powers and proof of actual competition within the definition of that term in the Hartford case actually existed.

But if the real basis of the savings banks cases was the power of the states to exempt on the ground of public policy without regard to the existence or actual competition, then I do not find in the legislation broadening the powers of national banks or in the opinion of the Supreme Court in the Hartford and Minnesota cases any evidence of an intention to take from the states the power to grant such exemptions.

And it is a little difficult to believe that the Court in the Hartford case, relying so heavily on the principles of the Mercantile Bank case, intended to overrule that part of that decision relating to the power of the state to exempt on

the ground of public policy without once mentioning the subject.

With this background of the history of the legislation and of its judicial interpretation, we now reach the precise question presented in this case—did the State of Michigan in 1952 have the power to exempt or prefer savings/building and loan associations without violating section 5219?

The 1899 decision of Judge Taft in the Hubbard case has already been discussed. The question was next considered by a Federal Court in 1932 in *Hoenig v. Huntington National Bank*, 59 Fed. 2d 479 (C. C. A.—6 certiorari denied October 17, 1932, 287 U. S. 648).

In this suit three national banks contended that section 5219 had been violated because of the preferential treatment given by the State of Ohio to building and loan associations.

The Court of Appeals reversed the District Court which had held that actual competition in fact existed between the national banks and the savings and loan institution and that section 5219 was violated. 45 Fed. 2nd 213.

The Court of Appeals in both the majority and minority opinions cited and recognized the principles of the Anderson and Hartford cases. But the majority of the Court held that the case was governed by the principle of the savings banks cases. It quoted from the opinion of Judge Taft in the Hubbard case that building and loan associations were not to be differentiated in their purpose or object or practical effect from savings banks.

The Court then met the argument that is made in the instant case that there is a difference between the building and loan associations of earlier days and those of today. The Court said:

“It is insisted, however, that the present day building association is a very different type of institution from the ‘small, neighborhood, mutual associations of Judge Taft’s

time,' and the emphasis is laid upon the construction of offices in similitude to those of banks, the competition for deposits, the payment of deposits on demand, and the making of loans upon collateral security. We do not think that the general nature of the business of building associations has so far changed as to make the law established by the above-cited cases inapplicable."

And then the Court considered the claim also made in this case as to the change in powers of national banks and said:

"It is quite true that national banks, subject to certain restrictions, are now permitted to loan money upon the security of real estate mortgages, and that the plaintiffs below had taken advantage of this privilege. It is also true that building associations have invested some of their funds in Liberty bonds, and, to a very limited extent, may have made a few investments of idle capital in collateral loans or so-called 'straight' mortgages. But we cannot concede that even as to these investments the building associations are in substantial competition with national banks, or that, as claimed by plaintiffs below, the mere facts that money is loaned by building associations upon promissory notes, at interest and to be repaid in money, and that national banks take the ownership of real estate into consideration in passing upon the credit standing of borrowers, necessarily bring the two classes of institutions into competition. In the broad economic sense this may be so, but it was equally so when *People of State of New York v. Commissioners*, *Mercantile Nat. Bank v. New York*, *First National Bank of Wellington v. Chapman*, and *Mercantile National Bank v. Hubbard* (*Lander v. Mercantile Nat. Bank*) were decided. In those cases the fundamental and substantial differences between commercial institutions, such as national banks, and institutions of the insurance company, savings bank, and building association types, were the real bases of the finding of want of competition; and our decision of the present issue is founded upon a recognition of these same differences."

It is the contention of plaintiff that the *Hoenig* case may be distinguished on the facts as to competition, but if the

portion of the opinion last quoted actually reflects the thinking of the Court of Appeals, additional proof of competition would not have affected the result. This matter of discrimination in favor of building and loan associations has also met consideration by the state courts and they have uniformly held on the strength of the savings bank cases that the state has the power to exempt or prefer building and loan associations. In addition to the state court decisions, in those cases which were appealed to the United States Supreme Court, there are the following: *People v. Goldfogle*, 205 N. Y. S. 870; 211 N. Y. S. 85 (1924); *Merchants National Bank v. Dawson County*, 19 Pacific 2d 892 (1933); *Consolidated National Bank v. Prieme County*, 42 Pacific 291 (1897).

It is the contention of the plaintiff that competition with building and loan associations was actually involved in three decisions of the Supreme Court, *First National Bank v. Hartford*, *supra*; *Commercial National Bank v. Custer*, 275 U. S. 502; *First National Bank of Shreveport v. Louisiana State Tax Commission*, 289 U. S. 60.

The Hartford case has already been discussed and as pointed out, while the state court specifically dealt with the effect of competition with building and loan associations, the Supreme Court based its decision on the basis of competition with real estate firms and individuals and did not mention the building and loan associations and did not discuss, much less overrule, the savings bank cases.

Commercial National Bank v. Custer is a like case. The Supreme Court decision is a memorandum opinion only. The opinion of the State Court (245 Pacific 259) discloses that the competition claimed represented money invested in notes in the hands of individuals, in mortgages, in real estate, and in investment companies, and in building and loan associations.

The Supreme Court opinion reads:

"Reversed on authority of *First National Bank of Hartford v. Hartford*, 273 U. S. 548, 559, 560; *Minne-*

sota v. National Bank of St. Paul, 273 U. S. 561, 567, 568."

Inasmuch as neither the Hartford case nor the Minnesota case was decided by the Supreme Court on the basis of competition with building and loan associations and in neither case was there any discussion of the savings bank cases or of the power of the State to exempt on the ground of public policy, I cannot find in the memorandum opinion any intention to overrule those cases or to hold the State without that power. For a discussion of the effect of the Custer case, see *Merchants National Bank v. Dawson County*, 19 Pacific 2d 893, 896 (Montana, 1933).

The third case relied upon by plaintiff is the *First National Bank of Shreveport v. The Louisiana Tax Commission*, 289 U. S. 60 (1933). The Court there affirmed the decision of the Louisiana Supreme Court in 143 Southern 23.

The State Court had held that the State of Louisiana had not violated either the 14th Amendment of section 5219 by its preferential treatment of loan companies, finance and securities companies, pawnbrokers, homestead and building associations, Federal joint stock land banks, life insurance companies, real estate, mortgage and investment companies, and investment brokers. The Louisiana Court said, insofar as building and loan associations were concerned, and quoting from the savings bank cases, that:

"even if the tax system complained of by plaintiffs did operate in favor of homestead and building associations (the Louisiana name for building and loan associations), that would not be a cause for complaint."

The United States Supreme Court, affirming the decision of the Louisiana Court, said, in answer to the 14th amendment argument:

"If we may take judicial notice of the functions of these alleged competitors of the plaintiffs, there appears ample basis for the classification, among other things,

in this: There is a fundamental difference between banks, which make loans mainly from money of depositors, and the other financial institutions, which make loans mainly from the money supplied otherwise than by deposits."

And in disposing of the argument based on section 5219, the Court did not discuss separately the several alleged competitors, but answered the argument of the national bank in the following language:

"The item most strenuously urged upon us is that the plaintiffs were engaged in lending money on mortgages of real estate, a line of business in which many mortgage companies, insurance companies, building and loan associations, and individuals were also engaged; and that the latter escaped taxation thereon. The record discloses that each of the banks held real estate mortgages in a substantial amount. But the fact that the banks held mortgages does not prove that they lent money on the security of those mortgages. These may have been taken to secure pre-existing liabilities or as additional security for personal loans. The Supreme Court, found: 'The testimony leaves no doubt that there was no competition with the national banks on the part of any concern lending money on mortgage of real estate, because national banks will never handle such loans.' The record contains evidence ample to support that finding."

Plaintiff urges that the statement as to fundamental difference between these alleged competitors related solely to the 14th amendment argument and furnishes no justification for a difference in tax treatment insofar as section 5219 is concerned.

And, because the Court in discussing the effect of section 5219, dealt with all the alleged competitors together, plaintiff draws the inference that if as a matter of fact actual competition had been found, the Court would have held that section had been violated because of the preferred treatment of the homestead associations.

I am unable to find the conclusion justified. Again, to agree with plaintiff, the Court must find that the Supreme Court intended to overrule the savings bank cases and to disapprove the decision of Judge Taft in the Hubbard case and that of the circuit court of appeals in the Hoenig case (in which it had but a few months earlier denied certiorari), without once mentioning those decisions nor their basis, that is, the power of the state to exempt on the ground of public policy.

I, therefore, find nothing in the decisions of the Hartford, Custer and Shreveport cases which justifies the conclusion that the Supreme Court has departed from the established law announced in the savings bank cases and applied in the Hubbard and Hoenig cases. The most that can be said of these cases is that perhaps the Court intentionally avoided coming to grips with this question, reserving its decision for a future day. Such a speculation scarcely justifies a trial judge in prophesying that the Court will eventually overrule its earlier decisions.

That the Supreme Court had not at that time lost sight of the principles involved in the savings bank cases is made clear by its opinion two years later in *Hopkins Savings Association v. Cleary*, 296 U. S. 315 (1935). Justice Cardozo in the case involving the construction and validity of one provision of the Home Owners Loan Act of 1933, said:

"A corporation is a juristic person organized by government to accomplish certain ends, which may be public or quasi-public, though for other purposes of classification the corporation is described as private. *Dartmouth College v. Woodward*, 4 Wheat. 518, 668-672. Cf. the statutes and decisions collected by Brandeis, J. in *Liggett Co. v. Lee*, 288 U. S. 517, 548, et. seq. This is true of building and loan associations in Wisconsin and in other states. They have been given corporate capacity in the belief that their creation will advance the common weal. The state, which brings them into being, has an interest in preserving their existence, for only thus can they attain the ends of their creation. They are more

than business corporations. They have been organized and nurtured as quasi public instruments. *Louisville Gas & Electric Co. v. Coleman*, supra. They may not divest themselves of a franchise when once it is accepted if the local statutes or decisions command them to retain it. See opinion of the court below, and cf. *Thomas v. Railroad Co.*, 101 U. S. 71; *Central Transportation Co. v. Pullman's Car Co.*, 139 U. S. 24. How they shall be formed, how maintained and supervised, and how and when dissolved, are matters of governmental policy, which it would be an intrusion for another government to regulate by statute or decision, except when reasonably necessary for the fair and effective exercise of some other and cognate power explicitly conferred."

And if the Court by its broad language in the *Hartford* case and by its emphasis on competition in the *Shreveport* case indicated any doubt as to the power of the State to exempt building and loan associations, the congressional act later in 1933 appears sufficient reason for holding that Congress has removed that doubt. I refer to the *Home Owners Loan Act of 1933* (12 U. S. C. A. 1461-1468).

By that act, Congress for the first time authorized the organization of Federal Savings and Loan Associations. In doing so, Congress defined its purposes in these words:

"In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the board is authorized under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation and regulation of associations to be known as 'Federal Savings and Loan Associations' and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home financing institutions in the United States." Section 1464(a).

In Subdivision 9, the act authorized the secretary of the treasury to subscribe for preferred stock in such associations and by subdivision J. to invest in full pay income shares of the associations.

Section 1465 provides:

"To enable the board to incorporate local thrift and local home financing and to promote, organize and develop the associations herein provided for or similar associations organized under state laws, there is appropriated" certain sums of money.

And in section 1464H, Congress dealt specifically with the taxation of such associations and provided:

"Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than imposed by such authority on other similar local mutual or co-operative thrift and home financing institutions."

While the United States Supreme Court has not, so far as I have discovered, determined the general power of Congress to adopt this act (see *Hopkins v. Savings and Loan Association*, 296 U. S. 315; *Kay v. U. S.*, 303 U. S. 1), the Circuit Court of Appeals (New York) has held that the act is valid as within the constitutional power of Congress to tax, borrow and make appropriations for the general welfare. *U. S. v. Kay*, 89 Fed. 2d 219 (C. C. A.).

I find this 1933 action on the part of Congress very significant.

—In providing for the creation of Federal Savings and

Loan Associations, Congress acted under its welfare powers, while in its earlier action providing for national banks, it had acted under its monetary powers.

—In the 1933 Statute, Congress determined that savings and loan associations were “local mutual thrift institutions in which people may invest their funds” and (which) “provided for the financing of homes.”

Congress determined that the interest of the people of the United States would be served by the organization and operation of such institutions and that the appropriation of public funds for that purpose was justified.

—Congress determined that the character of savings and loan institutions was so far different from the other financial institutions, that different and preferred tax treatment for the former was justified.

In providing for the taxation of these institutions by the State, Congress could have made the measuring stick, the limit on the rate of taxation, that imposed on national banks, also a creation of Congress. It could have made such measuring stick the rate imposed by the states on state banks and it could have made it that imposed on other moneyed capital. It did none of these things. Instead, it provided that the tax imposed should not be greater than that imposed on “other similar local mutual or cooperative thrift and home financing institutions.”

Congress thus identified the institutions that it considered to be in competition with Federal Savings and Loan Associations. Obviously, Congress did not consider savings and loan associations to be in competition with banks, either state or national.

This action on the part of Congress appears to be a clear recognition of the principles which underlie the decisions in the savings bank cases, the Hubbard case, and the Hoenig case. It forcefully negatives the claim that Congress, by

amending section 5219 in 1923, and by broadening the power of national banks, intended to change the law with respect to the preferred treatment by the state of thrift institutions.

Plaintiff further alleges that there has been such a substantial change in the purpose and character of building and loan associations since the savings bank cases and the Hubbard case that those authorities are no longer applicable.

This same contention was answered by the Circuit Court of Appeals in the Hoenig case. It is answered by the testimony of Professor Woodworth in this case and Congress by its definition of the purpose of the 1933 act effectively settles the question of the character and purpose of these institutions.

The Michigan Act has not been substantially changed since its adoption in 1887. It continues to provide that building and loan associations shall not do a banking business and shall not accept or advertise for deposits. It has been amended to make it compatible with the Federal 1933 Statute. Its purposes are to continue to be those stated in the Federal Act, namely:

"To provide local mutual thrift institutions in which people may invest their funds" and (which) "provide for the financing of homes."

The proofs do not support a finding that there has been any material difference between the Michigan institutions of the present day and those organized under the Federal Statute.

There remains one further question on this branch of the case. The rule, as stated in the savings bank cases, was that the power of Congress to exempt or prefer those institutions on the ground of public policy was subject to the limitation that the exemptions "should be founded upon just reason and not operate as an unfriendly discrimination against investments in national bank shares."

Both the reasoning of the courts in the savings bank cases,

the Hubbard case and the Hoenig case, and the provisions of the 1933 Act relating to Federal Saving and Loan institutions, and those of the Revenue Code giving preferred treatment to such associations in their income taxes (26 U. S. C. A. 1160, 591) furnish convincing proof that Congress had determined and the others recognized just reason for the exemption of preferred tax treatment of these associations.

Upon the trial, plaintiff contended that the Michigan Intangible Tax Act, as amended, imposed a tax on the shares of national banks which was substantially greater than that imposed on building and loan shares.

Defendant answered that because of the difference in character of the two institutions, the actual burden of the tax imposed on building and loan associations and its stockholders was from an economic standpoint substantially equal to the burden imposed on national banks and their stockholders. Citing *Amoskeag Savings Bank v. Purdy*, 231 U. S. 373, and *Tradesman Bank v. Tax Commission*, 309 U. S. 560.

In the *Amoskeag* case, the Court said:

"The State is not obliged to apply the same system to the taxation of national banks that it uses in the taxation of other property, provided no injustice, inequality or unfriendly discrimination is inflicted upon them. There are other considerations to be weighed in determining the actual burden of the tax, one of which is the mode of valuing bank shares—by adopting 'book values'—which may be more or less favorable than the method adopted in valuing other kinds of personal property."

In the *Tradesman Bank* case, the Court said:

"A consideration of the course of judicial decision on R. S. 5219 and its predecessors can leave no doubt that the various restrictions it places on the permitted methods of taxation are designed to prohibit only those systems of state taxation which discriminate in practical operation against national banking associations or their shareholders as a class. Compare *First National Bank*

v. Hartford, 273 U. S. 548; Amoskeag Savings Bank v. Purdy, 231 U. S. 373; Covington v. First National Bank, 198 U. S. 100; Lionberger v. Rouse, 9 Wall. 468. Thus it is not a valid objection to a tax on national bank shares that other moneyed capital in the state or shares of state banks are taxed at a different rate or assessed by a different method unless it appears that the difference in treatment results in fact in a discrimination unfavorable to the holders of the shares of national banks. Amoskeag Savings Bank v. Purdy, 231 U. S. 373; Covington v. First National Bank, 198 U. S. 100."

Defendant further quotes from an article in 31 Harvard Law Review, 321, 367, in which the author states:

"* * * So long as substantially equivalent burdens are imposed on all other economic values by taxation of tangible property and of the capital and franchises of corporations, it would be absurd to insist that the exemption of one or more of the legal forms of property in which those values may be represented, results in taxing shares in national banks at a greater rate than that imposed on other moneyed capital. The rule of the Mercantile Bank Case practically comes down to a disregard of formal legal discrimination where there is in fact no substantial economic discrimination."

Reference is also made to Woolsey, page 24:

"* * * Since the restriction in §5219 does not require that the state shall apply the same mode of taxation to national bank shares that it applies to other property provided no injustice, inequality, or unfriendly discrimination arises therefrom, the rate of taxation must refer to 'the actual incidence and practical burden of the tax upon the taxpayer.' * * * (Citing Covington v. First National Bank of Covington, and Amoskeag Savings Bank v. Purdy.)"

Plaintiff answers that Minnesota v. First National Bank, 273 U. S. 561, effectively disposes of this issue in favor of the plaintiff.

Whether or not the substantial equality from an economic

standpoint of the burden imposed is the proper test under section 5219 and the decision in the Minnesota case is unnecessary to the decision of this case in view of the conclusion to which I have come. However, the fact that the economic burdens imposed by the Michigan Statute are not at great variance is of force in determining whether the legislature in its treatment of taxation of savings/building and loan associations acted upon the grounds of sound public policy or for the purpose of an unfriendly discrimination against national banks.

I find nothing in the proofs or the law to indicate such a hostile intention on the part of the Michigan Legislature. Rather, it appears that such preference as may exist resulting largely from the difference in the character of the two institutions, was in pursuance of an established public policy long existing in the states and long recognized by the courts and by Congress as being justified by the purpose and object of savings/building and loan associations.

Accordingly, I conclude:

1. Since 1887, the Courts have consistently held in every case squarely involving the question that the state may exempt or prefer on the ground of public policy mutual savings bank and other like institutions, provided such exemption is based on just reason and is not made for the hostile purpose of an unfriendly discrimination with national banks.

2. That the power of the State to make such exemptions on the ground of public policy is an important one, grounded in history and on precedent. The intention of Congress to destroy it should not be lightly inferred.

3. The 1923 and 1926 amendments to section 5219 and the amendments to the Federal Reserve Act broadening the powers of the national banks were not intended to take from the State such long established and well recognized power.

4. That from their beginnings and continuously through

out their history, building and loan associations have been similar in character and purpose to and of the same general class of mutual thrift and home financing institutions as mutual savings banks.

5. That Congress in the Home Owners Loan Act of 1933 definitely recognized and approved such classification of savings/building and loan associations and the propriety of different tax treatments of banks and such associations and in effect, said that money invested in such associations is not moneyed capital in competition with the business of national banks.

6. That Michigan's tax treatment of savings/building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks.

Plaintiff further contends that the Michigan Intangible Tax Act, as amended (M. S. A. 7.556(2a)) imposes a tax "on the privilege of ownership" of shares in national banks, and that section 5219 permits only a tax upon "the shares of national banks" and does not permit a tax upon the "privilege of ownership" of such shares.

It must be agreed that if there is a legal difference between a tax "upon shares," a tax upon "the ownership of shares" and a tax upon the "privilege of ownership" of shares, the Michigan Statute is not too clear as to the type of tax here intended.

The Statute provides that:

*"There is hereby levied upon each * * * owner of shares of stock of national banking associations * * * and there shall be collected from each owner an annual specific tax on the privilege of ownership of each share of such stock * * *. The tax on such shares of stock levied under this section shall be the only tax levied with respect to shares of such associations, banks or trust companies."*

In *Goodenough v. Department of Revenue*, 828 Mich. 56, the Court, in deciding the nature of the tax imposed by section 2 on intangible personal property generally, had before it substantially the same language, that is:

"There shall be collected from such owner an annual specific tax on the privilege of ownership of each item of such property owned by him."

The Court quoted with approval from *Dawson v. Kentucky Distilleries*, 255 U. S. 288, in which the Court said:

"The name by which the tax is described in the statute is, of course, immaterial. Its character must be determined by its incidence."

The opinion in the Dawson case was written by Justice Brandeis and in it, he further said:

"To levy a tax by reason of ownership of property is to tax the property." Citing among other cases *Thompson v. Kreutzer*, 112 Miss. 165.

In the latter case, the Mississippi Court said:

"Ownership is not a privilege conferred by government, but is one of the rights which governments were organized to protect. Discarding, then, the word 'privilege' and substituting therefore the proper word 'right,' the distinction here sought to be made by the attorney-general is one without a difference. In a strict legal sense, 'property' (from the Latin word *proprius*, meaning 'belonging to one; one's own') is synonymous with the 'right of ownership' and means one's exclusive right of possessing, enjoying, and disposing of a thing. Burdick on Real Property, 2; 2 Blackstone, 2; 6 Words & Phrases (First Series) 5697 et seq.; 23 Am. & Eng. Enc. Law (2nd Ed.), 259; 32 Cyc. 647.

"Property may also be, and in the section of the Constitution here under consideration is, used to signify 'things owned.' In order that a thing may be owned, some one must, of course, have the right to the ownership thereof. A tax on a thing is a tax on all its essential attributes; and a tax on an essential attribute of

a thing is a tax on the thing itself. So that, a tax on a thing owned is necessarily a tax on the right of ownership thereof; and a tax on the right of ownership of a thing is necessarily a tax on the thing itself. No definition of property can be framed which does not include the right of ownership. Consequently, no tax can be imposed on the right of ownership which is not also a tax on property."

The proofs and the arguments in this case very forcefully demonstrate that the impact of the Michigan tax is upon the shares of plaintiff bank. Judging the tax by its incidence, I find no basis for holding that it is not a tax upon "the shares of national banking associations" within the meaning of that term as used in section 5219.

It is my opinion that the Michigan Intangible Tax Act, as amended, does not violate the Revised Statutes, Section 5219. A judgment may be entered for the defendants.

As I read section 16 of the Court of Claims Act (27.3548 (16)), the matter of costs is one of discretion.

The question here is a public one and one in which the State of Michigan and its various financial institutions are much interested. I do not feel that costs should be awarded against the plaintiff and the judgment shall, therefore, read "without costs."

Fred N. Searl,
Circuit Judge.

APPENDIX B**Michigan Supreme Court Opinion****358 Michigan 611****February 25, 1960**

[614] **KELLY, J.** Plaintiff's action to recover a 1952 deficiency intangibles tax assessment in the amount of \$49,929.27 resulted in judgment of no cause of action.

This appeal presents the question of whether CLS 1956, § 205.132a (Stat Ann 1957 Cum Supp § 7.556 [2a]), imposing a tax on bank shares, is invalid because it violates section 5219 of the Revised Statutes of the United States (12 USCA, § 548).

In 1953 (PA 1953, No. 9) the legislature amended the intangibles tax law so as to place both State and national banks in a special and more heavily taxed category, imposing a tax on bank shares at the rate of $5\frac{1}{2}$ mills (\$5.50 per \$1,000) "on the privilege of ownership of each * * * share of stock" based on the "capital account" of each bank. "Capital account" was defined to be the "capital, surplus and undivided profits" as shown on the latest annual report for each year—in this case as of December 31, 1952.

Appellant's position is set forth in its brief as follows:

"This is not a case of tax avoidance or claimed immunity by appellant. * * * The singularly important and impelling object of this case is to assure tax equality with competitors. The powerful and rapidly growing savings and loan associations (or their shareholders) should be taxed at the same rate as shares in national banks in Michigan, as required under RS § 5219—regardless of what that rate may be."

The validity of the tax imposed under PA 1953, No. 9, must rest upon the grant of congressional authority contained in 12 USCA, § 548 (RS § 5219), whereby congress conferred upon the States the power to tax national bank shares, providing that:

[615] "The several States may (1) tax said shares * * * provided the following conditions are complied with: * * *

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

Five intervening national banks asserted that they had similarly paid the 1952 tax under protest and sought to recover the amount so paid. The court, however, confined the proofs to the plaintiff, Michigan National Bank, and adjudicated only plaintiff's case.

The Michigan Bankers Association took a contra view to that of appellant, as is disclosed by the following from the trial court's opinion:

"The Michigan Bankers Association (representing both State and national banks) has been permitted to file a brief as *amicus curiae* in which it states the position of its members in these words:

"The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of the competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantage among the various types of institutions; [616] and that it has proven to be simple to administer. Such a system is obviously desirable, and this association, believing the

system to be entirely legal within the limitations of the Federal Constitution and statutes, does not want to see it destroyed.'

"And their counsel takes substantially the same position upon the several questions presented as does the attorney general on behalf of the defendants."

Plaintiff has its principal banking office in the city of Lansing. It carries on a banking business in that city and in the cities of Battle Creek, Flint, Grand Rapids, Marshall Port Huron, and Saginaw. In these cities there are 16 building/savings and loan associations.

Appellant was incorporated in 1941, and from December, 1941, to December 31, 1957, appellant had grown in total resources from about \$68,000,000 to approximately \$481,000,000, without the issuance of any additional common stock except stock dividends.

The transcript of testimony amounted to thousands of pages and hundreds of exhibits were introduced. The printed appendices and briefs consist of more than 1,650 pages.

Plaintiff offered testimony of officers of the loan associations and of plaintiff bank as to the claimed existence of mortgage loan competition between the 2 types of institutions, contending that:

"The *only* important questions are whether the capital employed by savings and loan associations in competition with national banks is substantial compared to the latter's capitalization and whether the residential mortgage loan business is a substantial phase of the business of national banks."

Plaintiff introduced proof in regard to the growth of savings and loan associations to the effect that in 1900 the associations were composed of poor people who had banded themselves together in neighborhood [617] groups, obligating themselves to set aside small weekly savings in order that they might mutually enable other savings members to borrow

to build small homes; that banking facilities were not available to such groups, as national banks had at that time no authority to accept savings accounts nor to engage in the home mortgage loan business; that the associations of today are Statewide and nationwide in operation and their moneyed capital is no longer obtained from nor loaned to the poorer class; that in 1900 the total assets of all associations in Michigan were only slightly over \$10,000,000, but by 1952 these assets had increased to over \$537,000,000.

Plaintiff also introduced proof that the loaning of money on the basis of mortgages secured by residential real estate, was a substantial phase of its business; that as of December 31, 1952, appellant held aggregate real-estate loans of \$62,000,000 and, in addition, had outstanding unsecured loans of approximately \$8,000,000 for repair and modernization of residential property; that these loans amounted to approximately 22% of the total assets of appellant bank (\$305,802,000); that as of that date the loans secured by mortgages on residential real estate were of the following types: FHA, approximately \$27,000,000; VA, \$9,000,000; and conventionals, \$15,000,000.

Appellant disclosed, by the public records of the register of deeds office in each of the 6 counties where plaintiff's banks were located, that during the year 1952, 2,934 mortgages were recorded by appellant, totalling \$23,089,907.33, of which approximately \$18,600,000 represented residential real estate loans; and that in the same counties in 1952 the records disclosed that the 16 savings and loan associations recorded 6,498 mortgages totalling \$35,575,546.27, some of which, however, were secured by commercial property.

[618] Defendants summarize their position as follows:

"In the last analysis, savings and loan associations cannot be in 'substantial competition with the business of national banks' because they cannot and do not engage sufficiently in the activities characteristically carried

on by the national banks. Stated another way, if they are not comparable institutions in substance, how can they be in substantial competition?"

To substantiate their position, defendants offered proof showing:

(1) While appellant engaged in all activities permitted national banking associations, including the ability to create checkbook money and receive time, savings, and demand deposits, savings and loan associations were able to engage solely in the narrow activity of making first mortgage loans secured by residential properties (with minor exceptions) or loans on the security of its savings shares accounts.

(2) During 1952 the 16 savings and loan associations doing business in the same cities as appellant bank made total commercial loans secured by business properties amounting to \$293,000—.9 of 1% of their total real-estate loans, or about 1/4 of 1% of their total assets. Appellant bank made such loans in the approximate amount of \$8,000,000, which constituted 13% of its total real-estate loans and was in excess of 2½% of its total assets. Of loans made by the savings and loan associations, practically all—99.1%—were secured by residential real estate, while only 87% of appellant's mortgage loans were so secured. Of these 87%, 70% or 7/10 were guaranteed by the Federal government as FHA and VA loans. Therefore, only 25% of appellant's mortgages were conventional residential nonbusiness mortgages; 60% were guaranteed FHA and VA [619] mortgages; and 13% were mortgages on commercial property. The 16 associations, on the other hand, carried FHA and VA loans amounting to only 19% of total loans, conventional residential nonbusiness loans amounting to 79.963% of their total loans, and mortgages on commercial property being practically nil.

(3) The total loan activities engaged in by the institutions illustrate different objectives. Only 42% of appellant bank's

total loans were secured by real estate, while 58% were not so secured. All of the associations' loans were secured by real estate.

(4) About 20% of appellant's total assets were employed in mortgage loans and approximately 23% of its interest income was received from mortgage loans. In the loan field, appellant's instalment loans, unsecured by real estate, were the most profitable. Here appellant received approximately 45% of its total interest income from the employment of approximately 19% of its total assets.

(5) In 1952 appellant had total deposits of some \$283,000,000, classified into approximately \$165,000,000 of commercial deposits (including \$22,000,000 of public funds) upon which no interest was paid to the depositors, approximately \$37,000,000 in time certificates, and approximately \$81,000,000 in savings deposits. In 1952 all the funds it had to loan were from deposits. Appellant used all of its funds—capital, surplus, undivided profits, reserves, and deposits, for the operation of its business. It cannot allocate or trace any dollar of its capital account to any particular mortgage or loan business. The savings and loan associations of Michigan cannot accept deposits, and, therefore, had none.

The court justified its finding of no cause of action by stating its conclusions as follows:

[620] "1. Since 1887, the courts have consistently held in every case squarely involving the question that the State may exempt or prefer on the ground of public policy mutual savings bank and other like institutions, provided such exemption is based on just reason and is not made for the hostile purpose of an unfriendly discrimination with national banks.

"2. That the power of the State to make such exemptions on the ground of public policy is an important one, grounded in history and on precedent. The intention of congress to destroy it should not be lightly inferred.

"3. The 1923 and 1926 amendments to section 5219

and the amendments to the Federal reserve act broadening the powers of the national banks were not intended to take from the State such long established and well-recognized power.

"4. That from their beginnings and continuously throughout their history, building and loan associations have been similar in character and purpose to and of the same general class of mutual thrift and home financing institutions as mutual savings banks.

"5. That congress in the home owners loan act of 1933 definitely recognized and approved such classification of savings/building and loan associations and the propriety of different tax treatments of banks and such associations and in effect, said that money invested in such associations is not moneyed capital in competition with the business of national banks.

"6. That Michigan's tax treatment of savings/building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks."

The general rule of partial exemption under RS § 5219 has been well established, as is disclosed by the following decisions:

Hepburn v. School Directors, 23 Wall (90 US) 480, 485 (23 L ed 112):

[621] "It could not have been the intention of congress to exempt bank shares from taxation because some moneyed capital was exempt. Certainly there is no presumption in favor of such an intention. To have effect it must be manifest. The affirmative of the proposition rests upon him who asserts it."

Adams v. Nashville, 95 US 19, 22 (24 L ed 369), in holding that an exemption of investments in municipal bonds did not violate RS § 5219, the court held:

"The act of congress was not intended to curtail the State power on the subject of taxation. It simply required that capital invested in national banks should not be taxed

at a greater rate than like property similarly invested. It was not intended to cut off the power to exempt particular kinds of property, if the legislature chose to do so. * * * The discretionary power of the legislature of the States over all these subjects remains as it was before the act of congress of June, 1864. The plain intention of that statute was to protect the corporations formed under its authority from unfriendly discrimination by the States in the exercise of their taxing power."

Boyer v. Boyer, 113 US 689, 693 (5 S Ct 706, 28 L ed 1089), the court in concluding that the Pennsylvania statute was inconsistent with RS § 5219 distinguished *Hepburn v. School Directors*, *supra*, stating:

"What the court had to decide, and all that it did decide, was whether the exemption from local taxation, of mortgages, judgments, recognizances, and money due upon agreements for the sale of real estate, in the hands of individuals, was a partial exemption only; that is, whether it was so substantial in its nature and operation as to affect the integrity of the general assessment for local purposes. * * * That case is authority for the proposition that a *partial* exemption by a State, for local purposes, of moneyed capital in the hands of individual citizens does not, [622] of itself and without reference to the aggregate amount of moneyed capital not so exempted, establish the right to a similar exemption in favor of national bank shares held by persons within the same jurisdiction."

Mercantile Bank v. New York, 121 US 138 (7 S Ct 826, 30 L ed 895). This case is recognized as an important one in interpreting RS § 5219. The court relied upon *Hepburn v. School Directors*, *supra*, and in determining that for public policy reasons section 5219 was not violated by State exemptions, the court held (pp 145, 146, 161):

"The proposition which the appellant seeks to establish is, that the State of New York, in seeking to tax national bank shares, has not complied with the condition contained in section 5219 of the Revised Statutes * * * in that, it has by its legislation expressly exempted from

all taxes in the hands of the individual citizens numerous species of moneyed capital, aggregating in actual value the sum of \$1,686,000,000, whilst it has by its laws subjected national bank shares in the hands of individual holders thereof (aggregating a par value of \$83,000,000), and State bank shares (having a like value of \$22,815,700), to taxation upon their full actual value, less only a proportionate amount of the real estate owned by the bank.' This exemption, it is claimed, is of a 'very material part relatively' of the whole, and renders the taxation of national bank shares void. . . .

"The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares. However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, which the policy of the State exempts from taxation for its own purposes, that exemption cannot affect the rule for the [623] taxation of shares in national banks, provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation."

Tax exemption or preferential tax treatment has been applied to mutual savings banks and savings and loan associations, as is disclosed by the following cases:

Mercantile Bank v. New York, 121 US 138, 160 (7 S Ct 826, 30 L ed 895), in construing RS § 5219 and justifying exemptions granted to savings banks, the court said (pp 160, 161):

"It cannot be denied that these deposits constitute moneyed capital in the hands of individuals within the terms of any definition which can be given to that phrase; but we are equally clear that they are not within the meaning of the act of congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must thereby also be exempted from taxation. No one can suppose for a moment that

savings banks come into any possible competition with national banks of the United States. They are what their name indicates, banks of deposit for the accumulation of small savings belonging to the industrious and thrifty. To promote their growth and progress is the obvious interest and manifest policy of the State. Their multiplication cannot in any sense injuriously affect any legitimate enterprise in the community. We have already seen that by previous decisions of this court it has been declared that 'it could not have been the intention of congress to exempt bank shares from taxation because some moneyed capital was exempt;' *Hepburn v. School Directors*, 23 Wall (90 US) 480 (23 L ed 112); and that 'the act of congress was not intended to curtail the State power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than like property similarly invested. [624] It was not intended to cut off the power to exempt particular kinds of property, if the legislature chose to do so.' *Adams v. Nashville*, 95 US 19 (24 L ed 369)."

Davenport Bank v. Davenport Board of Equalization, 123 US 83, 86 (8 S Ct 73, 31 L ed 94), in upholding exemptions of savings banks, the court again held:

"The whole subject has been recently considered by this court in the case of *Mercantile Bank v. New York*, 121 US 138 (7 S Ct 826, 30 L ed 895). In that opinion it was held that, while the deposits in the savings banks of New York constituted moneyed capital in the hands of individuals, yet it was clear that they were not within the meaning of the act of congress in such a sense as to require that because they were exempted from taxation the shares of stock in national banks must also be exempted. The reason given for this is that the institutions generally established under that name are intended for the deposits of the small savings and accumulations of the industrious and thrifty; that to promote their growth and progress is the obvious interest and manifest policy of the State; and, as was said in *Hepburn v. School Directors*, 23 Wall (90 US) 480 (23 L ed 112), it could not have been the intention of congress to exempt bank

shares from taxation because some moneyed capital was exempt."

Bank of Redemption v. Boston, 125 US 60 (8 S Ct 772, 31 L ed 689). Counsel urged that there was such a marked difference between the Massachusetts and the New York mutual savings banks, the *Mercantile Bank Case*, *supra*, would not apply. In disposing of this contention, the court therein stated (pp 66-68) :

"The tax on savings banks is based upon deposits merely. This is because deposits furnish the only [625] capital which is invested and employed. The institutions themselves, although corporations, have no capital stock, and are managed by trustees, not selected by the depositors, but by public authority. The whole amount of the deposits, with the exceptions noted, are subjected to a tax of 1/2 of 1%. On the other hand, the national banks pay a tax assessed upon the market value of the shares as personal property, upon a valuation and at a rate exactly equal to that of all other personal property subject to taxation in the State. But shares of the national banks, while they constitute the capital stock of the corporations, do not represent the whole amount of the capital actually employed by them. They have deposits, too, shown in the present record to amount, in Massachusetts, to \$132,042,332. The banks are not assessed for taxation on any part of these, although these deposits constitute a large part of the actual capital profitably employed by the banks in the conduct of their banking business. But it is not necessary to establish the exact equality in result of the 2 modes of taxation. The question of the exemption from taxation of deposits in savings banks, as affecting the rule for the State taxation of national bank shares, was very deliberately considered by this court in the case of *Mercantile Bank v. New York*, 121 US 138, 160 (7 S Ct 826, 30 L ed 895) ; and the conclusion reached in that case was reaffirmed in the case of *Davenport Bank v. Davenport Board of Equalization*, 123 US 83 (8 S Ct 73, 31 L ed 94). * * *

"It is impossible, in our judgment, to distinguish the present from the case of the New York savings banks,

or of those of Iowa considered in the case of the Davenport Bank. * * *

"It is alleged that in Massachusetts savings banks are permitted to transact a banking business in the way of loans upon personal securities, which assimilates them more closely to national banks, and takes away the reason for the application of the rule to them which was applied to the case of the savings banks of New York. But the difference [626] mentioned, if it exists at all, is immaterial; the main purpose and chief object of savings banks, as organized under the laws of Massachusetts, are the same as those in New York, as considered in the case of the Mercantile Bank. They are substantially institutions, under public management, in pursuance of a great and beneficial public policy, organized for the purpose of investing the savings of small depositors, and not as banking institutions in the commercial sense of that phrase. We adhere to the rule as declared in the cases heretofore decided, which forecloses further discussion."

Aberdeen Bank v. Chehalis County, 166 US 440, 460, 461 (17 S Ct 629, 41 L ed 1069). The court reaffirmed the 3 cases cited above, with emphasis on the *Mercantile Bank* decision, and stated:

"As to savings banks it was held that, though it could not be denied that their deposits constituted moneyed capital in the hands of individuals, yet it was clear that they were not within the meaning of the act of congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must also be exempted; that it was part of the policy of the State to encourage the accumulation of small savings belonging to the industrious and thrifty, and it was within the reasonable exercise of the power of the State to exempt particular kinds of property. * * *

"The conclusions to be deduced from these decisions are that money invested in corporations or in individual enterprises that carry on the business of railroads, of manufacturing enterprises, mining investments, and investments in mortgages, does not come into competi-

tion with the business of national banks, and is not therefore within the meaning of the act of congress; that such stocks as those in insurance companies may be legitimately taxed on income instead of on value, because such companies are not competitors for business with national banks; and that exemptions, however large, of deposits in [627] savings banks, or of moneys belonging to charitable institutions, if exempted for reasons of public policy and not as an unfriendly discrimination against investments in national bank shares, should not be regarded as forbidden by section 5219 of the Revised Statutes of the United States."

First National Bank of Wellington v. Chapman, 173 US 205, 214 (19 S Ct 407, 43 L ed 669):

"The result seems to be that the term 'moneyed capital,' as used in the Federal statute, does not include capital which does not come into competition with the business of national banks, and that exemptions from taxation, however large, such as deposits in savings banks or moneys belonging to charitable institutions, which are exempted for reasons of public policy and not as an unfriendly discrimination as against investments in national bank shares, cannot be regarded as forbidden by the Federal statute."

The approval of the supreme court of the United States of partial exemptions of mutual savings banks also applies to savings and loan associations, as shown by the following decisions:

Mercantile National Bank of Cleveland v. Hubbard (ND Ohio) 98 F 465, 471. Judge Taft wrote the opinion and clearly differentiated between national banks and building and loan associations, stating:

"There is proof of the capital in savings banks, and also of the capital invested in building and loan associations; but, under the decision of *Mercantile Bank v. New York*, 121 US 138 (7 S Ct 826, 30 L ed 895), capital invested in savings banks cannot be regarded as moneyed capital, within the meaning of section 5219, exemption

of which from taxation can constitute a discrimination within the inhibition of that section. It seems to me that building associations are certainly not to be differentiated in their purpose or object, or practical effect, from savings [628] banks, and that the capital invested in them, though subject to a somewhat different rule of taxation, cannot be regarded as moneyed capital in competition with the moneyed capital in national banks, any more than is capital invested in savings banks. The chief object of building associations is to encourage the building of small houses by poor people, and the saving from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house. The mere fact that every shareholder in a building association need not be a borrower cannot, I think, change the effect of the general purpose of the building association law."

This case was reversed by the circuit court of appeals in *Mercantile National Bank of Cleveland v. Hubbard* (CCA 6), 105 F 809. Upon remand injunction issued in *Mercantile National Bank of Cleveland v. Lander* (ND Ohio), 109 F 21. Appeal to the supreme court of the United States resulted in reversal. (*Lander v. Mercantile Bank*, 186 US 458 [22 S Ct 908, 46 L ed 1 247]), with specific direction to reverse the circuit court of appeals and affirm the judgment of the circuit court.

In *Hoenig v. Huntington National Bank of Columbus* (1932) (CAA 6), 59 F2d 479, 482, certiorari denied 287 US 648 (53 S Ct 93, 77 L ed 560), it was said:

"It is insisted, however, that the present day building association is a very different type of institution from the 'small, neighborhood, mutual associations of Judge Taft's time,' and emphasis is laid upon the construction of offices in similitude to those of banks, the competition for deposits, the payment of deposits on demand, and the making of loans upon collateral security. We do not think that the general nature of the business of building associations has so far changed as to make the law established by the above-cited cases inapplicable."

Compare *United States* [629] v. *Cambridge Loan & Building Co.*, 278 US 55 (49 S Ct 39, 73 L ed 180). The chief purpose of these institutions is still 'to encourage the building of small houses by poor people, and the saving from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house.' *Mercantile National Bank v. Hubbard* (ND Ohio), 98 F 465, 471."

An examination of the record in the *Hoenig Case* discloses:

1. The assets of the savings and loan associations in Ohio in 1926 were approximately equal to the total assets of all national banks in Ohio; while in 1952 the assets of all savings and loan associations in Michigan constituted less than 15% of the total assets of national banks in Michigan; and

2. The assets of savings and loan associations in Ohio in 1926 were approximately double the total assets of such associations in Michigan in 1952.

Keeping in mind inflation and change in the general status of our economy, the record in the *Hoenig Case* showed that the average investment in the Ohio associations was about \$500 compared to approximately \$1,500 in Michigan in 1952, and the average outstanding loan was \$2,806 in 1926, at the time the *Hoenig Case* was decided, while the average outstanding loan of Michigan associations in 1952 was \$4,872.

The home owners' loan act was enacted by congress in 1933 (ch 64, §§ 1-9, 48 Stat 128 [12 USCA, §§ 1461-1468, inclusive, as amended]). The purpose of the act is set forth in section 5 (12 USCA, § 1464, as amended) as follows:

"(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the board is authorized, under such rules and regulations [630] as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'federal savings and loan

associations,' and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States."

In determining States' rights to tax such associations, congress provided in the same section :

"(h) Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, territorial, county, municipal; or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

The trial court commented upon congressional action disclosing that congress did not consider savings and loan associations to be in competition with either State or national banks, and in its opinion said :

"In providing for the taxation of these institutions by the State, congress could have made the measuring stick, the limit on the rate of taxation, that imposed on national banks, also a creation of congress. It could have made such measuring stick the rate imposed by the States on State banks and [631] it could have made it that imposed on other moneyed capital. It did none of these things. Instead, it provided that the tax imposed should not be greater than that imposed on 'other similar local mutual or cooperative thrift and home financing institutions.'

"Congress thus identified the institutions that it considered to be in competition with Federal savings and loan associations. Obviously, congress did not consider savings and loan associations to be in competition with banks, either State or national."

• The home owners' loan act of 1933 provision markedly differs with the provision in regard to States' rights to tax joint-stock land banks (act of congress July 17, 1916, ch 245, § 26, 39 Stat 380) where congress provided:

"Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section 5219 of the Revised Statutes with reference to the shares of national banking associations."*

The congressional provision for national agricultural credit corporations (act of congress March 4, 1923, ch 252, title 2, § 211, 42 Stat 1469) also provided a different test for State taxation than congress provided for Federal savings and loan associations, as is disclosed by the following:

"Taxation by a State of the shares in national agricultural credit corporations, or of dividends derived therefrom, or of the income of said corporations, or real estate owned by them, shall be such only as is or may be authorized by law in the case of national banking associations; and taxation by a [632] State of the debentures or other obligations of such corporations shall not be at a higher rate than the rate applicable to other moneyed capital in the hands of individual citizens thereof."*

The following decisions disclose that because plaintiff bank's shares were taxed at a different rate, or assessed by a different method than the method employed to tax the building and loan associations, does not violate RS § 5219:

*12 USCA, § 932—Reporter.

• *12 USCA, § 1261—Reporter.

Tradesmens National Bank of Oklahoma City v. Oklahoma Tax Commission (1940), 309 US 560, 567 (60 S Ct 688, 84 L ed 947):

"A consideration of the course of judicial decision on RS § 5219 and its predecessors can leave no doubt that the various restrictions it places on the permitted methods of taxation are designed to prohibit only those systems of State taxation which discriminate in practical operation against national banking associations or their shareholders as a class. Compare *First National Bank v. City of Hartford*, 273 US 548 (47 S Ct 462, 71 L ed 767, 59 ALR 1); *Amoskeag Savings Bank v. Purdy*, 231 US 373 (34 S Ct 114, 58 L ed 274); *Covington v. First National Bank of Covington*, 198 US 100 (25 S Ct 562, 49 L ed 963); *Lionberger v. Rouse*, 9 Wall (76 US) 468 (19 L ed 721). Thus it is not a valid objection to a tax on national bank shares that other moneyed capital in the State or shares of State banks are taxed at a different rate or assessed by a different method unless it appears that the difference in treatment results in fact in a discrimination unfavorable to the holders of the shares of national banks. *Amoskeag Savings Bank v. Purdy*, *supra*; *Covington v. First National Bank of Covington*, *supra*."

Covington v. First National Bank of Covington (1905), 198 US 100, 114, 115 (25 S Ct 562, 49 L ed 963):

[633] "As to the alleged discrimination against shareholders in national banks because the assessment of the property of State banks is upon the franchise and not upon the shares of stock, there is nothing in the bill to show that this difference in method operates to discriminate against national bank shareholders by assessing their property at higher rates than are imposed upon capital invested in State banks. And as to the deduction of the value of real estate and other deductions allowed to State banks, the supreme court of Kentucky has held that all deductions allowed to State banks must be allowed in like manner in assessing the property of shareholders in national banks, *Commonwealth v. Citizens' National Bank*, 117 Ky 946 (80 SW 159). Nor does the

allegation that in cities of the first, second, and third class State banks are assessed upon their shares for city taxation, but upon their franchises and property for State and county taxation, in the absence of averments of fact showing that thereby a heavier burden of taxation is imposed upon national than State banks in such cities, warrant judicial interference for the protection of shareholders in national banks. *Davenport Bank v. Davenport Board of Equalization*, 123 US 83 (8 S Ct 73, 31 L ed 94)."

People v. Weaver (1879), 100 US 539 (25 L ed 705), held that the restriction contained in the act of congress (section 5219) had to do with the actual incidence and practical burden of the tax upon the taxpayer.

Appellees introduced testimony, which was not controverted, that building and loan associations pay taxes which appellant bank does not pay (franchise, capital stock increase, use, and personal property taxes), and further disclosed that the ratio of State and local taxes to total assets of the associations was .089, while appellant's rate was .091; and, also, in regard to the proportion of the intangible tax [634] to the total assets of national banks in Michigan and the proportion of the Michigan franchise tax to the total assets of all savings and loan associations showing a ratio of .02459 for all Michigan national banks and .02243 for all State savings and loan associations.

In dealing with the phrase "coming into competition with the business of national banks" as used in RS § 5219, the court in *First National Bank of Guthrie Center v. Anderson, County Auditor* (1926), 269 US 341 (46 S Ct 135, 70 L ed 295), stated (pp. 347, 348):

"The earlier decisions have been reviewed from time to time in later cases, and all, taken collectively, may be summarized as showing, so far as is material here

"1. The purpose of the restriction is to render it impossible for any State, in taxing the shares, to create and foster an unequal and unfriendly competition with na-

tional banks, by favoring shareholders in State banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking. *Mercantile Bank v. New York*, 121 US 138, 155 (7 S.Ct 826, 30 L ed 895); *Des Moines National Bank v. Fairweather*, 263 US 103, 116 (44 S Ct 23, 68 L ed 191).

"2. The term 'other moneyed capital' in the restriction is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks. *Mercantile Bank v. New York*, *supra*, 157; *Aberdeen Bank v. Chehalis County*, 166 US 440, 461 (17 S Ct 629, 41 L ed 1069).

"3. Moneyed capital is brought into such competition where it is invested in shares of State banks or in private banking; and also where it is employed, substantially as in the loan and investment features [635] of banking, in making investments, by way of loan, discount or otherwise, in notes, bonds, or other securities with a view to sale or repayment and reinvestment. *Mercantile Bank v. New York*, *supra*, 155-157; *Palmer v. McMahon*, 133 US 660, 667, 668 (10 S Ct 324, 33 L ed 772); *Talbot v. Silver Bow County*, 139 US 438, 447 (11 S Ct 594, 35 L ed 210).

"4. The restriction is not intended to exact mathematical equality in the taxing of national bank shares and such other moneyed capital, nor to do more than require such practical equality as is reasonably attainable in view of the differing situations of such properties. But every clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks is a violation of both the letter and spirit of the restriction. *People v. Weaver*, 100 US 539 (25 L ed 705); *Boyer v. Boyer*, 113 US 689, 701 (5 S Ct 706, 28 L ed 1089); *First National Bank of Wellington v. Chapman*, 173 US 205, 216 (19 S Ct. 407, 43 L ed 669)."

Building and loan associations are incorporated in Michigan under PA 1887, No. 50, as amended, and the purpose of such associations is set forth in section 1,* as follows:

"Building and improving homesteads, * * * accumulating money to be loaned to its members * * * or assisting its members to accumulate and invest their savings."

Section 37 of the act provides:

"No building and loan association shall, directly or indirectly, do a banking business." (CL 1948, § 489.37 [Stat Ann 1957 Rev § 23.580]).

The fundamental difference between a bank making loans from deposits and loans made otherwise, was recognized in *First National Bank of Shreveport* [636] v. *Louisiana Tax Commission* (1933), 289 US 60, 64 (53 S Ct 511, 77 L ed 1030, 87 ALR 840), where it is said:

"If we may take judicial notice of the functions of these alleged competitors of the plaintiffs, there appears ample basis for the classification, among other things, in this: There is a fundamental difference between banks, which make loans mainly from money of depositors, and the other financial institutions, which make loans mainly from the money supplied otherwise than by deposits."

Appellant relies on *First National Bank of Hartford v. City of Hartford* (1927), 273 US 548 (47 S Ct 462, 71 L ed 767, 59 ALR 1), and states that the trial court:

"Erroneously predicated his decision upon the proposition that savings and loan associations were different in character and in purpose from national banks, and, therefore, could not compete as a matter of law, within the meaning of RS § 5219. This is directly contrary to the ruling of the United States supreme court that:

"'Competition in the sense intended [by RS § 5219] arises not from the character of the business of those who compete but from the manner of the employment of the capital at their command.' *First National Bank of Hartford v. City of Hartford* (1927), 273 US 548, 557."

*See CL 1948, § 489.1 (Stat Ann 1957 Rev. § 23.541)—Reporter.

Appellant, recognizing that its contention was contrary to the cases above cited allowing partial exemption for savings banks and building and loan associations (and particularly was this true in regard to *Bank of Redemption v. Boston*, 125 US 60 [31 L ed 689]) states:

"However, a contention was made by the plaintiff national bank that Massachusetts savings banks were permitted to transact a banking business in the way [637] of loans upon personal securities which more closely assimilated them to national banks, than to the savings banks such as were involved in *Mercantile (Mercantile Bank v. New York)*. This argument the court summarily considered and dismissed, saying (in *Bank of Redemption v. Boston*, *supra*, 68) :

"But the difference mentioned, if it exists at all, is immaterial; the main purpose and chief object of savings banks, as organized under the laws of Massachusetts, are the same as those in New York, as considered in the case of the *Mercantile Bank*. They are substantially institutions, under public management, in pursuance of a great and beneficial public policy, organized for the purpose of investing the savings of small depositors, and not as banking institutions in the commercial sense of that phrase."

"To the extent that this case stands for the proposition that the character, object, and purpose of an institution claimed to be in competition with a national bank was determinative rather than the manner of employment of its capital, this case must be deemed to be overruled by the later cases which held, as stated in *First National Bank of Hartford v. Hartford* (1927), *supra*, 557, 558:

"Section 5219 is not directed merely at discriminatory taxation which favors a competing banking business. Competition in the sense intended arises not from the character of the business of those who compete but from the manner of the employment of the capital at their command. * * * To so restrict the meaning and application of section 5219 would defeat its purpose."

We do not agree with appellant that the *Hartford* decision overruled the *Bank of Redemption Case*, but agree with appellees' answer:

"Appellant attempts to persuade us that the *Bank of Redemption* decision was overruled by *First National Bank of Hartford v. Hartford*, 273 US 548. There is utterly nothing in the *Hartford* decision [638] which expressly or impliedly undertakes a repudiation of *Bank of Redemption*. *Hartford* was addressed to a situation where sweeping preferences were granted to large areas of competing money capital."

The *Hartford* decision established that a mixed question of fact and law is involved in determining the question of "substantial competition" and stated (p.552):

"The validity of the tax complained of depends upon whether or not the moneyed capital in the State thus favored is employed in such a manner as to bring it into substantial competition with the business of national banks.

"The question thus raised involves considerations both of fact and of law. To answer it, it is necessary to ascertain the nature and extent of the moneyed capital in the hands of individual citizens within the State and the relation of its employment, in point of competition, to the business of plaintiff and other national banks. It is necessary also to ascertain the precise meaning to be given the statute as applied to the facts in hand in order to determine whether the particular moneyed capital and the particular competition with which we are here concerned are moneyed capital and competition within the spirit and purpose of the statute. The question is thus a mixed one of law and fact, and in dealing with it we may review the facts in order correctly to apply the law."

Not only did the *Hartford* decision deal with sweeping exemptions for a large number of competing institutions, but the equivalence of the tax imposed on national banks and other institutions was not considered, as evidence by the following (pp 551, 552):

"The court below assumed, and it was not questioned upon the argument here, that this tax is not to be taken as an equivalent or substitute for the *ad* [639] *valorem* tax levied upon bank shares and no question of the possible equivalence of the 2 schemes of taxation is presented."

First National Bank of Hartford v. City of Hartford, *supra*, established that "approximate equality in taxation" was a major test, by stating at page 560:

"But a consideration of the entire course of judicial decision on this subject can leave no doubt that State legislation and taxing measures which by their necessary operation and effect discriminate against capital invested in national bank shares in the manner described are intended to be forbidden."

The record in this appeal discloses that Michigan building and loan associations operated in a narrow, restricted field, are markedly different in character, purpose and organization from national banks, and are not in "substantial competition" with national banks.

The record establishes that there was practical equality of the total tax imposed upon building and loan associations and upon national banks, and any difference would be justified as partial exemptions under the decisions of the supreme court of the United States quoted above. The restriction contained in RS § 5219 has to do with the actual incidents and practical burden of the tax imposed. (See *People v. Weaver*, 100 US 539 [25 L ed 705].)

Appellant, as a taxpayer claiming immunity from the tax, had the burden of establishing its right to the exemption. There is no presumption of unlawful discrimination or that Michigan PA 1953, No. 9, imposed a tax "at a greater rate than [was] assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks." To meet this test, appellant had to introduce proof that was "manifest." (See *Hepburn v. School Directors*, 23 Wall [640] [90 US] 480 [23 L ed

112], and *Norton Company v. Department of Revenue of Illinois*, 340 US 534 [71 S Ct 377, 95 L ed 517].) Plaintiff failed to meet this burden of proof.

We reiterate and approve the finding of the trial court:

"That Michigan's tax treatment of savings/building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks."

Affirmed. No costs, a public question involved.

DETHMERS, C. J., and CARR, SMITH and EDWARDS, JJ., concurred.

KAVANAGH and BLACK, JJ., did not sit.

SOURIS, J., took no part in the decision of this case.

APPENDIX C**Judgment of Michigan Supreme Court**

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 25th day of February in the year of our Lord one thousand nine hundred and sixty.

Present the Honorable

**Michigan National Bank,
Plaintiff and Appellant,**

vs. 48138

**Department of Revenue, et al.,
Defendants.**

**JOHN R. DETHMERS,
Chief Justice,**

LELAND W. CARR,

HARRY F. KELLY,

TALBOT SMITH,

GEORGE EDWARDS,

Associate Justices.

The record and proceedings in this cause having been brought to this Court by appeal from the Court of Claims, and the same, and the grounds of appeal specified therein, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Court, there is no error, Therefore it is ordered and adjudged that the judgment of said Court of Claims be and the same is hereby in all things affirmed, and that no costs be awarded herein.

APPENDIX D**(R. S. 5219)****United States Code, Title 12****NATIONAL BANK SHARES****§548. State taxation.**

The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with;

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corpora-

tions doing business within its limits: Provided, however, That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the state on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

2. The shares of any national banking association owned by nonresidents of any State shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

4. The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section. (R.S. § 5219; Mar. 4, 1923, ch. 267, 42 Stat. 1499; Mar. 25, 1926, ch. 88, 44 Stat. 223.)

APPENDIX E**Act No. 9, Public Acts of 1953**

An act to amend section 2a of Act No. 301 of the Public Acts of 1939, entitled as amended "An act to provide for the imposition and the collection of a specific tax upon the privilege of ownership of intangible personal property; to provide for the disposition of the proceeds thereof; to prescribe the powers and duties of the department of revenue with respect thereto; to prescribe penalties; to make an appropriation to carry out the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," as added by Act No. 182 of the Public Acts of 1952, being section 205.132a of the Compiled Laws of 1948.

The People of the State of Michigan enact:**Section amended.**

Section 1. Section 2a of Act No. 301 of the Public Acts of 1939, as added by Act No. 182 of the Public Acts of 1952, being section 205.132a of the Compiled Laws of 1948, is hereby amended to read as follows:

205.132a. Intangibles tax; stock of banks and trust companies; capital account definition; date of payment of tax. [M.S.A. 7.556 (2a)]

Sec. 2a. For the calendar year 1952, in lieu of the tax imposed by this section prior to this amendatory act, and for each year thereafter, or a portion thereof, there is hereby levied upon each resident or nonresident owner of shares of stock of national banking associations located in this state and banks and trust companies organized under the laws of this state, and there shall be collected from each such owner an annual specific tax on the privilege of ownership of each such share of stock, whether or not it is income producing, equal in the case of a share of common stock to $5\frac{1}{2}$ mills upon each dollar of the capital account of such association, bank or

trust company represented by such share, and equal in the case of a share of preferred stock to $5\frac{1}{2}$ mills upon the par value of such share. "Capital account" as referred to herein shall be determined by adding the common capital, surplus and undivided profits accounts exactly as they appear on the report as of the latest date during the year for which the tax is imposed prepared by such association, bank or trust company for the public authority having general regulatory supervision over it, and the dollar amount of the capital account represented by each share of its common stock shall be determined by dividing such capital account by the number of shares of such common stock outstanding at the date of such report. The tax on such shares of stock levied under this section shall be the only tax levied with respect to shares of such associations, banks or trust companies.

The tax imposed by the provisions of this section 2a for the calendar year 1952 shall be due and payable on or before 45 days after the effective date of this section 2a and that so imposed for each year thereafter shall be due and payable as provided for in section 4 of this act.

Notwithstanding anything to the contrary contained in any other provision of this act, the amount of all taxes paid by any such association, bank or trust company on behalf of its shareholders for the calendar year 1952 in accordance with any provision or provisions of this act in effect prior to the effective date of this section 2a shall be credited as a payment against the tax imposed on the shares of such association, bank or trust company for the calendar year 1952 under this section 2a.

This act is ordered to take immediate effect.

Approved March 25, 1953.

LE COPY

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,
Appellant,

**NATIONAL BANK OF WYANDOTTE, THE FIRST
NATIONAL BANK (THREE RIVERS, MICHIGAN),
COMMERCIAL NATIONAL BANK OF IRON MOUN-
TAIN, THE NATIONAL BANK OF JACKSON, and
THE FIRST NATIONAL BANK AND TRUST COM-
PANY OF KALAMAZOO**, banking associations organized
under the laws of the United States,

Intervening Plaintiffs,

vs.

**STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and LOUIS M. NIMS,
STATE COMMISSIONER OF REVENUE,**

Appellees.

**ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN**

MOTION TO DISMISS OR TO AFFIRM

**PAUL L. ADAMS
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**Samuel J. Torina
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The Capitol
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

**NATIONAL BANK OF WYANDOTTE, THE FIRST
NATIONAL BANK (THREE RIVERS, MICHIGAN),
COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN,
THE NATIONAL BANK OF JACKSON, and
THE FIRST NATIONAL BANK AND TRUST COMPANY
OF KALAMAZOO**, banking associations organized
under the laws of the United States,

Intervening Plaintiffs,

vs.

**STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and LOUIS M. NIMS,
STATE COMMISSIONER OF REVENUE,**

Appellees.

**ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN**

MOTION TO DISMISS OR TO AFFIRM^[1]

[1]

Unless otherwise indicated, numbers in parentheses will refer to pages of the Jurisdictional Statement; numbers in parentheses followed by "a" will refer to pages in the printed appendix in the Supreme Court below; and numbers in parentheses followed by "b" will refer to pages of the appendices to the Jurisdictional Statement.

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, appellees move that appellant's appeal from the judgment (70b) of the Supreme Court of Michigan, entered February 25, 1960, be dismissed on the following grounds:

1. It does not present a substantial federal question;
2. Appellant has not properly raised any federal question; and
3. The judgment of the Supreme Court of Michigan is conclusive.

In the alternative, appellees move that said judgment be affirmed on the ground that it is manifest the questions on which the decision of the cause depends are so unsubstantial as to need no further argument.

OPINIONS BELOW

The opinions of the courts below, and references thereto are correctly set forth by appellant (1b-69b).^[2]

JURISDICTION

Appellant attempts to invoke jurisdiction of this Court under 28 U.S.C.A. § 1257(2). For the reasons set forth herein, the appeal should be dismissed.

[2]

Opinion of Judge Fred N. Searl, acting as judge of the Court of Claims (1b-44b) and opinion of the Michigan Supreme Court, reported in 358 Mich. 611, 101 N.W. 2d 245 (45b-69b).

STATUTES INVOLVED

Appellant takes too narrow a view of the statutes involved. There are taxes imposed by statutes on savings and loan and building and loan associations which are not imposed on national banking associations because of § 5219^[3] of the Revised Statutes of the United States, which statutes have not been cited by the appellant.^[4] General reference to taxation of financial businesses in Michigan is set forth on pp 40-43, *infra*, under Addendum A.

[3]

Mar. 4, 1923, ch. 267, 42 Stat. 1499; Mar. 25, 1926, ch. 88, 44 Stat. 223; 12 U.S.C. § 548, hereinafter referred to as § 5219.

[4]

For convenient reference, § 5219 is set out in pertinent part, as follows:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

As evidencing congressional intent to exclude certain institutions from § 5219, the courts below significantly relied upon the statutory provisions by which Congress has granted power to the states to tax federally chartered building and loan associations created by the Home Owners' Loan Act of 1933,^[5] joint stock land banks, and agricultural credit corporations.

The Michigan Supreme Court quotes and refers to these statutes as follows (59b-61b):

"The home owners' loan act was enacted by congress in 1933 (ch 64, §§ 1-9, 48 Stat 128 [12 USCA, §§ 1461, 1468, inclusive, as amended]). The purpose of the act is set forth in section 5 (12 USCA, § 1464, as amended) as follows:

"(A) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "federal savings and loan associations," and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States."

"In determining States' rights to tax such associations, congress provided in the same section:

"(II) Such associations, including their fran-

[5]

June 13, 1933, ch. 64, § 1-9, 48 Stat. 128; §§ 1461 to 1468, inclusive, Title 12, U.S.C.A.

chises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

"The trial court commented upon congressional action disclosing that congress did not consider savings and loan associations to be in competition with either State or national banks, and in its opinion said:

"In providing for the taxation of these institutions by the State, congress could have made the measuring stick, the limit on the rate of taxation, that imposed on national banks, also a creation of congress. It could have made such measuring stick the rate imposed by the States on State banks and it could have made it that imposed on other moneyed capital. It did none of these things. Instead, it provided that the tax imposed should not be greater than that imposed on "other similar local mutual

or cooperative thrift and home financing institutions.”

“Congress thus identified the institutions that it considered to be in competition with Federal savings and loan associations. Obviously, congress did not consider savings and loan associations to be in competition with banks, either State or national.”

“The home owners’ loan act of 1933 provision markedly differs with the provision in regard to States’ rights to tax joint-stock land banks (act of congress July 17, 1916, ch 245, § 26, 39 Stat 380) where congress provided:

“Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section 5219 of the Revised Statutes with reference to the shares of national banking associations.”

• 12 USCA, § 932—Reporter.

“The congressional provision for national agricultural credit corporations (act of congress March 4, 1923, ch 252, title 2, § 211, 42 Stat 1469) also provided a different test for State taxation than congress provided for Federal savings and loan associations, as is disclosed by the following:

“Taxation by a State of the shares in national agricultural credit corporations, or of dividends

derived therefrom, or of the income of said corporations, or real estate owned by them, shall be such only as is or may be authorized by law in the case of national banking associations; and taxation by a State of the debentures or other obligations of such corporations shall not be at a higher rate than the rate applicable to other moneyed capital in the hands of individual citizens thereof.”

• 12 USCA, § 1261—Reporter.”

QUESTIONS PRESENTED

The jurisdictional statement of appellant does not properly state any federal question. We believe the only possible federal question to be:

Is Act 9, Michigan Public Acts of 1953,^[6] which imposed for the year 1952 a tax of 5½ mills on national bank shares, invalid under § 5219 because the Michigan legislature has not treated a savings share account of a savings and loan association^[7] as being equivalent to a share of national bank stock, when the national bank loans a portion of its deposit money on residential properties and the savings and loan associations employ their mutual share account moneys for the same general purpose?

[6]

Mich. Comp. Laws § 205.132a; Mich. Stat. Ann. '59 Cum. Supp. (Henderson) § 7.556(2a).

[7]

Federal statutes permit chartering of only those institutions known as “savings and loan associations”. Michigan law permits organizing of both savings and loan and building and loan associations. Their functions are similar and both entities are herein termed “savings and loan associations”.

By their motion to dismiss or affirm, appellees raise the following issues:

1. The question presented is too unsubstantial to warrant further argument.
2. The appellant has not properly raised any federal question.
3. The judgment of the Supreme Court of Michigan is conclusive.

STATEMENT OF THE CASE

Appellees cannot accept the appellant's statement of the case. Appellant would lead this Court to believe that national banking associations have been singled out for special tax treatment, as distinguished from general corporations and others conducting financial businesses in Michigan. An examination of the tax structure of the state of Michigan, as it affects financial institutions, clearly disproves this contention.^[8]

Since the appellant has limited its case to alleged discriminatory treatment of savings and loan associations, it may be assumed that all financial businesses in Michigan, except such associations, are subject to state taxes equivalent to those imposed on appellant.

Thus, appellant's complaint is limited to alleged partial preferential treatment of both federal and state chartered

[8]

For a general discussion of Michigan's taxation of financial businesses, see Addendum A, pp 40-43, *infra*.

savings and loan associations, whose share accounts and total assets represent a small but unknown portion of the total financial business in Michigan in 1952.

Reference is made to the trial court's opinion in Appendix A of the Jurisdictional Statement for a proper statement of the case (1b-6b). As there indicated, appellant seeks to bring its cause within the rule of

First National Bank v. Hartford, (1927) 273 US 548.

The respective positions of the parties were stated thusly by the trial court:

“Plaintiff contends that the Michigan Intangible Tax Act fails to meet the requirements of Section 5219 in two particulars: (1) Michigan National Bank's shares are taxed at a greater rate than other moneyed capital in the hands of individual citizens coming into competition with the business of the plaintiff bank, (2) that the Michigan Statute levies a tax upon ‘the privilege of ownership’ of shares in national banks; that this is not the legal equivalent of a tax upon the shares in such banks and is not one of the alternate methods of taxation permitted.” (2b)[9]

“Initially, the moneyed capital alleged by plaintiff to be in competition with it and to be taxed at a lesser rate included building or savings and loan associations, insurance corporations, credit union, finance companies, and monies in the hands of individuals and partnerships.

[9]

Contention (2) has been abandoned by the appellant, since it is not mentioned in the Jurisdictional Statement.

"Shortly before the commencement of trial, plaintiff abandoned its claim insofar as insurance corporations, credit unions, finance companies and individuals and partnerships were concerned, and its counsel stated that it would confine its case to the competition which national banks face in this state with building and savings and loan associations, both state and federal.

• • •

"Without attempting to state in detail the proofs • • •, it may be said that plaintiff claims that the proofs bring the case within the rule stated in *First National Bank v. Hartford*, 273 U.S. 548: • • •." (3b)

"In support of such claim, plaintiff offered a mass of statistical evidence as to the capital, assets, savings accounts, loans and investments of national banks, nationally, state-wide and of the plaintiff national bank. Like evidence was offered as to the business of the savings/building and loan associations, nationally, state-wide and in the seven cities in which plaintiff did business.

"Plaintiff further offered the testimony of officers of the loan associations and of the plaintiff banks as to the existence of competition between the two types of institutions.

"And plaintiff forcefully urges that such evidence establishes that both plaintiff and defendant make loans upon the security of mortgages on residential real property and that in that field there exists, in fact, substantial competition between the plaintiff bank and the several savings/building and loan associations.

"Plaintiff further contends that the rate of tax levied against the shares of national banks is several times that levied against the shares of savings/building and loan associations.

"Defendants take issue with plaintiff upon the existence of competition in fact, and upon the existence of discrimination in the rate of tax against the two types of institutions.

"With reference to competition, in fact, defendants contend that the savings and loan association operating in the area of plaintiff bank are small institutions as compared to the plaintiff; that they function solely in a very narrow and restricted field compared to the varied activities of plaintiff and other national banks; that the savings and loan associations' basic organization and financial structure are so different from national banks that they cannot be compared with such institutions; that the alleged competing savings and loan associations concentrate their loans in conventional loan activity prohibited to plaintiff bank while plaintiff concentrated its loan activity in fields (F.H.A. and V.A.) not utilized by the savings and loan associations; that the proofs offered do not sustain a finding that the capital employed by savings and loan associations in 1952 represented a substantial portion of capital employed in any alleged competition by the savings and loan associations with the business of the plaintiff and other national banks; that plaintiff had no difficulty in obtaining all the capital it needed in 1952 and could not trace any part of its capital to any investments and that in 1952 it loaned only its deposit money on security of real estate.

"And defendant summarizes its position on this

factual issue as follows: 'in the last analysis, savings and loan associations cannot be in "substantial competition with the business of national banks" because they cannot and do not engage sufficiently in the activities characteristically carried on by the national banks. Stated another way, if they are not comparable institutions in substance, how can they be in substantial competition?'

"Upon the issue of discrimination, it is defendants' contention that the Michigan Intangible Tax from the standpoint of the economic impact, imposes an equivalent tax burden on national banks and savings and loan associations.

"Defendants further present certain serious contentions of law which if decided in favor of defendants, make the determination of the above issues of fact unimportant. These, to a certain extent, overlap and may be briefly summarized: first, that the states have the power to give preferential tax treatment to thrift and home financing institutions such as mutual savings banks and savings/building and loan associations upon the ground of public policy without violating section 5219; and, secondly, that Congress by the enactment of the 1933 Home Owners Loan Act has made it clear that the provisions of section 5219 do not apply to savings/building and loan associations.

"The banks of Michigan are not unanimous in this litigation.

"The Michigan Bankers Association has been permitted to file a brief as amicus curiae in which it states the position of its members in these words:

“The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of the competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantage among the various types of institutions; and that it has proven to be simple to administer. Such a system is obviously desirable, and this Association, believing the system to be entirely legal within the limitations of the Federal Constitution and Statutes, does not want to see it destroyed.”

“And their counsel takes substantially the same position upon the several questions presented as does the Attorney General on behalf of the defendants.”
(4b-7b) (Emphasis supplied)

The trial court determined that Michigan had authority to grant preferential tax treatment to thrift and home financing institutions, such as mutual savings banks and building and loan associations, so long as it was founded upon just reason, and did not operate as an unfriendly discrimination against investments in national bank shares. The court concluded that the partial exemption rule¹⁰¹ was dispositive

[10]

Reference will be made throughout this brief to this rule, which can be generally stated, as follows: A state may exempt or preferentially tax some moneyed capital employed in competition with some phases of the business of national banks without invalidating a tax on national bank shares, so long as the exemption or preferential treatment is for just reason and not as a hostile or unfriendly discrimination.

of the issues since Michigan's tax treatment of savings and loan associations as compared to national banks is based upon just reason and is not made with the hostile purpose of discriminating against national banks.

The Michigan Supreme Court based its judgment on the same rationale as that of the trial court.

1.

**A SUBSTANTIAL FEDERAL QUESTION IS
NOT PRESENTED**

It is believed that appellant has not presented a substantial federal question to this Court of alleged violation of § 5219 because:

A. The Michigan tax structure does not discriminate against investors in shares of national bank stock within the meaning of § 5219.

B. Michigan is entitled to exempt or preferentially tax savings share accounts of savings and loan associations without violating § 5219.

C. The capital of savings and loan associations, representing savings share accounts, invested in the narrow and restricted field of first mortgage home financing is not in "substantial competition" with the capital of national banks within the purview of § 5219.

A. The Michigan tax structure does not discriminate against investors in shares of national bank stock within the meaning of § 5219.^[11]

There is no substantial federal question presented because the state of Michigan *has followed* previous decisions of this Court under § 5219. Despite appellant's insistence that only the rate of the tax must be considered, the cases hereinafter cited clearly establish that in applying the statute the concern is with comparing the total tax burden on national bank shares and on the alleged competing moneyed capital. Further, exact mathematical equality of burden is not required. Appellees offered expert testimony before the trial judge to show the substantial tax equivalence between the two. It is the only such evidence in the record. It was relied upon by the courts below (41b, 68b). Its verity is substantiated by the fact that the Michigan Bankers Association, in its brief amicus curiae, states that this tax is "• • • equitable from the viewpoint of the competitors • • •". (7b, 46b)

As stated in

First National Bank of Guthrie Center v. Anderson, County Auditor, et al., (1926) 269 US 341, at p 348:

"4. The restriction is not intended to exact mathematical equality in the taxing of national bank shares and such other moneyed capital, nor to do more than

[11]

Since savings and loan associations may be exempted or preferred tax-wise under the partial exemption rule based on public policy or on congressional manifestation of intent in *pari materia* legislation, there cannot be substantial competition within the purview of § 5219, nor can there be discrimination within the meaning of § 5219.

require such practical equality as is reasonably attainable in view of the differing situations of such properties. But every clear discrimination against national bank shares and in favor of a *relatively material part of other moneyed capital employed in substantial competition with national banks* is a violation of both the letter and spirit of the restriction. *People v. Weaver*, 100 U.S. 539; *Boyer v. Boyer*, 113 U.S. 689, 701; *National Bank of Wellington v. Chapman*, 173 U.S. 205, 216." (Emphasis supplied, except cases)

Appellant's mechanical comparison—measurement by rate alone—is *not* an application of § 5219. A long and consistent line of decisions under § 5219 developed the proposition that it is the *effect* of the tax, not merely its *rate*, which is controlling.

This was recognized in

People v. Weaver, (1879) 100 US 539,

where it was held that the actual incidence and practical burden of the tax upon the taxpayer was controlling. To the same effect are

First National Bank v. Hartford, supra, (1927) 273 US 548, 560, 561;

First National Bank of Guthrie Center v. Anderson, supra, (1926) 269 US 341, 347, 348;

Tradesmen's National Bank of Oklahoma City v. Oklahoma Tax Commission, (1940) 309 US 560, 567;

31 Harvard Law Review, 321, 367, "Indirect Encroachment on Federal Authority by the Taxing Powers of the States"; and

Woosley, *State Taxation of Banks* [Chapel Hill, The University of North Carolina Press (1935)], p 24.

It is to be noted that the Court in the *Hartford* case, *supra*, in deciding that discrimination did exist, stated, at pp 551-552:

“ . . . The court below assumed, and it was not questioned upon the argument here, that this tax is not to be taken as an equivalent or substitute for the ad valorem tax levied upon bank shares and no question of the possible equivalence of the two schemes of taxation is presented. . . . ” (Emphasis supplied)

Davenport Bank v. Davenport, 123 US 83;

Amoskeag Savings Bank v. Purdy, 231 US 373; and

Bank of Redemption v. Boston, 125 US 60,

indicate that the equivalent tax burden required by § 5219 is met by an asset comparison or a capital account comparison between savings banks and national banks. The combined effect of these three cases and that of *People v. Weaver*, *supra*, (1879) 100 US 539, justifies either of two comparatives in determining the question of discrimination:

(1) The measure of total assets to total assets (as inferred in the *Bank of Redemption* and *Weaver* cases); or

(2) The reserves and undivided profits of the savings and loan associations with the actual value of national bank stock (the *Amoskeag*, *Weaver* and *Davenport* cases).

Appellees' testimony established that there are several possible methods of comparing the effect of a state tax structure on the two types of unlike institutions involved

in this case. One method, as stated above, is the comparison of the tax effect on the total assets by each institution, which seems to be a significant comparison when the alleged competition relates to the employment of assets in the real estate mortgage field. This comparative is in accord with *Bank of Redemption, supra*. Under this comparative, there was approximate tax equality in 1952 between the two institutions under consideration (68b).^[12]

A second method [(2) above] specifically approved as to mutual savings banks (*Bank of Davenport* and *Amoskeag Savings Bank* cases, *supra*), involves a comparison of the tax impact on the capital, surplus and undivided profits of a national bank with the tax impact on all the reserves and undivided profits of the savings and loan associations in question. Taking into consideration the total taxes imposed upon each type of institution (except the unemployment and real property taxes which are imposed equally on these institutions), the resulting percentages are 5.2 for savings and loan associations and 5.6 for the appellant bank.^[13]

In reference to the comparison that the appellant insists upon, Professor Woodworth^[14] stated that in light of the facts developed in his preceding testimony, such comparison

“ * * * is completely absurd. It ignores the economic realities of the businesses of the two institutions and

[12]

Exhibits 213 (1279a) and 226 (1292a).

[13]

Computations were made from information contained in Exhibits 3 (931a-935a); 208 (1270a); and 209 (1273a-1274a). On this method of comparison, see Professor Woodworth's testimony (862a).

[14]

George Walter Woodworth, Professor of Finance at the School of Business Administration, University of Michigan, and specializing in money and banking.

rests on the superficiality that [a] savings and loan share account is legally an equity rather than a deposit debt and being an equity share is comparable to shares of national bank stock. . . . (861a) (Emphasis supplied)

Appellant does not deny, and both of the courts below specifically found, that the tax structure of the state of Michigan subjected economic equivalents to comparable tax treatment. The Supreme Court stated:

“The record establishes that there was practical equality of the total tax imposed upon building and loan associations and upon national banks, and any difference would be justified as partial exemptions”

“We reiterate and approve the finding of the trial court:

“ ‘That Michigan’s tax treatment of savings building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks.’ ” (68b-69b)[15]

[15]

This finding of the lower courts was based upon evidence offered by the appellees pertaining to the question of discrimination. In the testimony of Mr. Carlson (747a, et seq.) and Professor Woodworth (803a, et seq.), and in Exhibits 208 (1270a), 208A (1271a), 208B (1272a), 210 (1275a), 212 (1278a), 213 (1279a), and 226 (1292a), the appellees carefully presented the impact of the Michigan tax structure on the institutions in question. This testimony and these exhibits are uncontroverted.

It is therefore clear that the appellant has not presented to this Court a substantial question of discrimination between taxes imposed on its investors and upon savings and loan associations savings share account holders.

B. Michigan is entitled to exempt or preferentially tax savings share accounts of savings and loan associations without violating § 5219.

Even if significant tax discrimination could be said to exist, Michigan's treatment of savings and loan associations does not violate § 5219.

This Court early relied upon the "partial exemption" rule, which was developed to leave intact the states' right, for public policy reasons, to exempt or preferentially tax some moneyed capital without violating § 5219. In origin and purpose, it is not unlike the power of the states to exempt certain property from ad valorem taxation without violating due process, equal protection, and uniformity provisions of constitutions.

Thus, this Court in

Aberdeen Bank v. Chehalis County, 166 US 440, at p 454,

quoted the following from

Bell's Gap Railroad Co. v. Pennsylvania, 134 US 232, 237, in regard to the partial exemption rule of § 5219:

" * * * All such regulations, and those of like character, so long as they proceed within reasonable

limits and general usage, are within the discretion of the state legislature, or the people of the State in framing their constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition.* * * *

The following decisions clearly establish the partial exemption rule—prescribe its limitations—and bring savings and loan associations within its scope:

People v. Commissioners, 4 Wall 214, 256

Hepburn v. School Directors, 23 Wall 480, 485

Adams v. Nashville, (1877) 95 US 19, 22

Boyer v. Boyer, 113 US 689, 693

Mercantile Bank v. New York, (1887) 121 US 128,
145, 161

National Bank of Wellington v. Chapman, 173 US
205, 214

Aberdeen Bank v. Chehalis County, *supra*, 166 US
440, 460

Bell's Gap Railroad Co. v. Pennsylvania, *supra*, 134
US 232, 237

Davenport Bank v. Davenport, *supra*, 123 US 83, 86

Bank of Redemption v. Boston, *supra*, 125 US 60,
67-68

Mercantile National Bank v. Hubbard, (1899) 98 F
465, 471; *aff'd sub nomine Lander v. Mercantile
National Bank*, 186 US 458

Hoinig v. Huntington National Bank, (1932) (CCA
6th Circuit) 59 F 2d 479; *Cert. denied* 287 US 648

First National Bank of Shreveport v. Louisiana Tax Commission, (1933) 289 US 60

People v. Goldfogle, (1924) 205 NYS 870, 123 Misc 399, aff'd by App Div, 211 NYS 85

First National Bank of Glendive v. Dawson County, (1923) 66 Mont 321; 213 P 1097

Merchants' National Bank of Glendive v. Dawson County, (1933) 93 Mont 310; 19 P 2d 892

Consolidated National Bank v. Pima County, 5 Ariz 142, 48 P 291

To prevail, appellant must circumvent the clear import of these decisions, which is simply that a state's tax on bank shares is not invalidated by § 5219 if the state exempts or preferentially taxes for public policy reasons some moneyed capital. The leading § 5219 case of *Mercantile Bank v. New York*, *supra*, 121 US 138, quoted and relied upon extensively in *Hartford*, *supra*, applied the partial exemption rule to mutual savings banks and determined that the exemption and preferential treatment accorded some moneyed capital in New York did not violate § 5219. Counsel for the *Mercantile Bank*, relying upon *Boyer v. Boyer*, *supra*, 113 US 689, argued that the partial exemption rule was not applicable because the exemption of moneyed capital in New York was

“ * * * of a ‘very material part relatively’ of the whole, and renders the taxation of national bank shares void.” [121 US 138, 145]

No tax was imposed by New York on savings banks and municipal bonds. By reliance on *Hepburn v. School Directors*, *supra*, 23 Wall 480, this Court determined that § 5219 was not thereby violated and stated, at p 161:

“ * * * The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon just reason, and not operate as an unfriendly discrimination against investments in national bank shares. However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, *which the policy of the State exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks*, provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens otherwise subject to taxation.” [121 US 138, at p 161] (Emphasis supplied)

[quoted in *Aberdeen Bank v. Chehalis County*, *supra*, 166 US 440, at p 460].

The rule was otherwise stated in *National Bank of Wellington v. Chapman*, *supra*, 173 US 205, at p 214:

“ * * * exemptions from taxation, however large, such as deposits in savings banks or monies belonging to charitable institutions, which are exempted for reasons of public policy and not as an unfriendly discrimination as against investments in national bank shares, cannot be regarded as forbidden by the Federal statute.”

This established rule of partial exemption founded upon state public policy considerations has not been altered or changed by any decisions involving § 5219. Furthermore, the congressional creation of federal savings and loan associations by the Home Owners' Loan Act of 1933 demonstrates a congressional recognition and affirmance of the proposition that savings and loan associations are not to

be compared to national banking associations for purposes of determining the validity of state tax systems.

Appellant attempts to convert its unsupported argument into a substantial federal question in this cause by asserting that the partial exemption rule was dependent upon the lack of *factual* competition between the moneyed capital of such institutions and of national banking associations; and, further, that no sound public policy reason exists to justify preferential tax treatment of savings and loan associations. The difficulty with this argument is that it does not jibe with the language employed by this Court on numerous occasions in interpreting § 5219; it is inconsistent with congressional treatment of federal savings and loan associations by the Federal Home Owners' Loan Act of 1933; it requires the *Hartford* case, *supra*, 273 US 548, to be read as overruling the *Mercantile* case, *supra*, 121 US 138; and it ignores the actual proof of competition in some of the partial exemption cases, including *Bank of Redemption v. Boston*, *supra*, 125 US 60, and *Hoening v. Huntington National Bank*, *supra*, (CCA 6th Circuit) 59 F 2d 479.

The appellant is in error in its contention that the partial exemption rule is not applicable where there is factual competition, as is illustrated by the record in *Bank of Redemption*, *supra*, 125 US 60, Records and Briefs, US Sup. Ct., Vol. 472, Oct. Term 1887.^[16]

[16]

As there stated:

“1. The stipulation of facts reads in part: ‘Said savings bank in the year 1885, and in the years before that, received deposits and loaned a part thereof: (1) on promissory notes secured by collateral securities such as they were by law allowed to invest their deposits in; (2) on notes of cities and towns; (3) on promissory notes with two sureties, called ‘loans on personal security’, in most cases with collateral other than such as mentioned before (except

Appellant's fallacy (that the partial exemption rule is based upon an absence of factual competition) is further illustrated by reference to the *Hoenig* cases [*Commercial Nat. Bank, Columbus, Ohio, et al., v. Treasurer of Franklin County, Ohio*, 45 F 2d 213, reversed by a divided court, *Hoenig v. Huntington National Bank, supra*, (CCA 6th Circuit) 59 F 2d 479, certiorari denied 287 US 648]. The District Court in the *Hoenig* litigation appointed a Special Master, who took voluminous evidence pertaining to the question of the competition between savings and loan associations and national banking associations in Ohio in 1926. In his report to the District Judge, the Special Master found that a relatively large and material part of the moneyed capital of building and loan associations was em-

in the case of notes of corporations which were taken without collateral and to a large amount), * * *." (P 25-Record)

2. The stipulation further indicates that the notes of the savings banks were not materially different, in terms and conditions, from the bank notes and for that reason it was further stipulated that: "In the ordinary course of the business of borrowing and loaning money in Massachusetts persons engaged in obtaining loans on such notes or negotiating them for themselves or others during said years applied for and procured them indiscriminately at said savings banks and said national banks wherever they could obtain them on the best terms; and said savings banks usually made such loans on longer terms and lower rates * * *." (P 26-Record)

3. Of approximately \$66,000,000 of total assets of the savings banks in Boston in 1882, \$25,000,000 were invested in the type of notes described above. (P 71-Record) .

4. Bank assets in Boston in 1882 amounted to approximately \$111,000,000 and savings bank assets amounted to approximately \$66,000,000, which was in excess of the value of all bank stock in Boston. (P 71-Record)

5. Assets of savings banks in Massachusetts, amounting to approximately \$115,000,000, included government bonds, railroad bonds, bank deposits, cash, real estate, loans on real estate mortgages, loans on public funds and bank stock, loans to governmental units, and loans of approximately \$62,000,000 which were on personal security. (P 43-Record)

ployed in the making of loans of a kind normal to national banks and in substantial competition with the business of national banks in Ohio.

The District Judge agreed with these findings. In his "Special Findings of Fact and Separate Conclusions of Law" [*Hoenig* Circuit Court of Appeals Record, pp 81, 82], he referred at length to the varied and substantial activity of the savings and loan associations in Ohio, which constituted the same activity carried on by national banks in Ohio and in Columbus. He stated, after analysis of the facts:

"As a conclusion from the above facts, it is found that while not all of the business done by building and loan companies comes into competition with the plaintiffs and other national banks in the City of Columbus, a relatively large and material part of the moneyed capital of building and loan associations in the City of Columbus is employed in the making of loans of a kind normal to national banks and in substantial competition with the business of the plaintiff banks and other national banks in the City of Columbus in the making of mortgage loans by such national banks and the employment of their capital for said purpose." (pp 81, 82-Record)

Because of such substantial *factual* competition, the District Court held that § 5219 was violated by the Ohio tax on national bank shares. The dissenting judge in the Circuit Court of Appeals arrived at the same conclusion by the same reasoning.

It is thus apparent that the Circuit Court of Appeals, in reversing the District Court, was well aware of the substantial *factual* competition found to exist by the Master

and by the District Court. Without mentioning the finding of substantial *factual* competition; the majority in the *Hoenig* case found no "substantial competition" within § 5219 because of the marked differences between savings and loan institutions and national banks and because the *partial* exemption rule controlled.

The following table is a comparison of some of the statistical information set forth in the *Hoenig* record with the same information for Michigan for the year 1952.

"HOENIG" FACTS* (1926)

*Numbers in brackets refer to pages of the Hoenig record.

Assets of All National Banks in Ohio (1)	Assets of All S & L Ass'ns in Ohio (2)	Ratio of (2) to (1)
\$947,979,000 [Report of the comptroller of the Currency, 1926, p. 444]	\$928,381,733 [78,316]	.98
Total Real Estate Loans of Banks at Beginning of Year and Percent of Assets	Total Real Estate Loans of Ass'ns at Beginning of Year and Percent of Assets	Ratio of 91% to 5.11%
\$48,742,000 [37, 65] = 5.14%	\$844,078,174.55 [38, 81] = 91%	17.7
Deposits of All National Banks in Ohio	Deposits plus "Running Stock" of All Ass'ns in Ohio	Ratio of 79.6% to 71.3%
\$676,125,000 [64, 343] = 71.3% of total assets	\$738,548,784 [316] = 79.6% of total assets	1.12
Average Investment**	<p>**Ohio associations had both deposits and savings share account holders. Some persons undoubtedly had both types of accounts. The record does not disclose the average per capita holding in both accounts.</p> <p>The average investment of \$497 includes reserves and undivided profits of \$22 per share.</p>	
\$497		
Average Outstanding Loan		
\$2806		

FACTS IN THIS CAUSE (1952)

Assets of All National Banks in Mich. (3)	Assets of All S & L Ass'ns in Mich. (1)	Ratio of (4) to (3)
\$3,728,340,000 [Exh. 226]	\$534,314,000 [Exh. 6]	.143
Total Real Estate Loans of Nat'l Banks in the U.S. in Percent of Total Assets	Total Real Estate Loans of Ass'ns in the U. S. in Percent of Total Assets	Ratio of 81.2% (80.4%) to 7.6%
7.6% [Exh. 220, 224A]	81.2% (All S & L Ass'ns in Michigan = 80.4%) [Exh. 209, 224A]	10.7 (10.6)
Deposits of All Nat'l Banks in the U. S.	Share Deposits of All Ass'ns in the U. S.	Ratio of 84.8% (87.0%) to 91.8%
91.8% of total assets [Exh. 224] (Mich. Nat'l Bank is also 91.8%)	84.8% of total assets 87.0% in Michigan [Exh. 221, 222A]	.92 (.94)
<p>Average Shareholding</p> <p>\$1419 (8-15-52)</p> <p>Average Outstanding Loan</p> <p>\$4872 (8-15-52)</p>		

This table aptly demonstrates (as do many other references to the *Hoening* record found in the appellees' brief before the Michigan Supreme Court {pp 113-114, 161-171}) that savings and loan associations in Ohio at the time of the *Hoening* decision were more formidable financial institutions and were as much in competition with the business of national banks as were the 16 savings and loan associations in Michigan in 1952.

It is thus clear that appellant is asking this Court to set aside its previous recognition of established public policy concerning mutual thrift institutions such as savings and loan associations and to overrule the clearly established precedent of this Court that kept intact the partial exemption rule from the early case of *People v. Weaver, supra*, (1879) 100 US 539, to date—some 81 years—based only on the reedlike argument that an immaterial issue [factual competition] was not decided in the partial exemption cases.[17]

[17]

Appellant attempts this also by ignoring the limitations contained in the partial exemption rule, i.e., that the exemption (1) must be partial only, (2) must not operate as an unfriendly or hostile discrimination against owners of national bank stock, and (3) must be based on just reason and sound public policy. While not contending that the Michigan tax structure operates as an unfriendly or hostile discrimination or that the exemption is not partial only, appellant is asking this Court to override the established public policy concerning savings and loan associations and other mutual thrift institutions as far as § 5219 is concerned. The contention of the appellant that the established public policy concerning savings and loan associations should be ignored is answered by the lower court as follows (38b-39b):

"Plaintiff further alleges that there has been such a substantial change in the purpose and character of building and loan associations since the savings bank cases and the Hubbard case that those authorities are no longer applicable.

- C. The capital of savings and loan associations, representing savings-share accounts, invested in the narrow and restricted field of first mortgage home financing is not in "substantial competition" with the capital of national banks within the purview of § 5219.

Because of the absence of "substantial competition" under § 5219, there is still no substantial federal question.

In consistently ruling out savings and loan associations and mutual savings banks from consideration under § 5219, the courts were well aware of two things: (1) That mutual savings banks and savings and loan associations were re-

"This same contention was answered by the Circuit Court of Appeals in the Hoenig case. It is answered by the testimony of Professor Woodworth in this case and Congress by its definition of the purpose of the 1933 act effectively settles the question of the character and purpose of these institutions.

"The Michigan Act has not been substantially changed since its adoption in 1887. It continues to provide that building and loan associations shall not do a banking business and shall not accept or advertise for deposits. It has been amended to make it compatible with the Federal 1933 Statute. Its purposes are to continue to be those stated in the Federal Act, namely:

"To provide local mutual thrift institutions in which people may invest their funds' and (which) 'provide for the financing of homes.'

"The proofs do not support a finding that there has been any material difference between the Michigan institutions of the present day and those organized under the Federal Statute.

"Both the reasoning of the courts in the savings bank cases, the Hubbard case and the Hoenig case, and the provisions of the 1933 Act relating to Federal Saving and Loan institutions, and those of the Revenue Code giving preferred treatment to such associations in their income taxes (26 U.S.C.A. 116C, 591) furnish convincing proof that Congress had determined and the others recognized just reason for the exemption of [or] preferred tax treatment of these associations."

stricted by legislation to very limited activity and were not permitted to engage in the banking business; and (2) that they were organizations whose business was the direct and active use of the pooled funds of their members as contrasted to national banks, which, as ordinary profit stock corporations, utilized moneys from sources other than their investors to carry on their general banking business.

The question thus posed is: How can fundamentally different institutions, which cannot be compared, be said to be in "substantial competition" within the meaning of § 5219?

Appellant does not attempt to answer this question but assumes that savings and loan associations are in *substantial competition* with national banks because both institutions operate in the home financing field. To substantiate this, appellant showed that it employs a part of its assets in the traditional home financing field of the savings and loan associations.[18]

[18]

Appellant, in its statement as to jurisdiction, poses a question of competition between savings and loan associations and national banks for deposit money. It is submitted that the competition with which § 5219 is concerned is other moneyed capital in competition with the money that would be invested in national bank stock and not money that would be deposited in national banks. The express holding of *Hoenig v. Huntington National Bank, supra* (1932) (CCA 6th Circuit) 59 F 2d 479 (cert. denied 287 US 648) forecloses such argument. As there stated at pp 482-483:

"As to the alleged 'competition for deposits,' it is evident from the universal expressions of opinion by the Supreme Court that competition, in the sense intended, is limited to the employment of moneyed capital 'substantially as in the loan and investment features of banking.' Deposits constitute moneyed capital, but national banks are not taxed upon their deposits any more than are savings banks and building as-

Appellant gives no recognition in its argument to the established rule that the issue of substantial competition with the business of national banks presents a mixed question of fact and of law. As stated by this Court in the case of *First National Bank v. Hartford*, *supra*, (1927) 273 US 548, at p 552:

“ * * * The validity of the tax complained of depends upon whether or not the moneyed capital in the state thus favored is employed in such a manner as to bring it into substantial competition with the business of national banks:

“The question thus raised involves considerations both of fact and of law. To answer it, it is necessary to ascertain the nature and extent of the moneyed capital in the hands of individual citizens within the state and the relation of its employment, in point of competition, to the business of plaintiff and other national banks [QUESTION OF FACT]. It is necessary also to ascertain the precise meaning to be given the statute as applied to the facts in hand in order to determine whether the particular moneyed capital and the particular competition with which we are here concerned

sociations; and we are here primarily concerned only with what is done with such moneyed capital after it is secured, not with competition to obtain it. There is clearly no distinction in law between the competition for deposits as between national banks and savings banks, and the same competition as between national banks and building associations. Thus *Mercantile Nat. Bank v. New York*, *supra*, seems directly in point on this issue.”

or, as otherwise stated in *People v. Goldfogle*, *supra*, (1924) 265 NYS 870, at p 879, 123 Misc. 399 (aff'd by App. Div. 211 NYS 85):

“ * * * The very depositor in the national bank itself is lending money to the bank, often at interest, but such persons do not actually compete for business with a national bank.”

are moneyed capital and competition *within the spirit and purpose of the statute* [QUESTION OF LAW].

The question is thus a mixed one of law and fact, and in dealing with it we may review the facts in order correctly to apply the law. * * *

(Bracketed material and emphasis added)

The *fact* of "competition" is the "nature and extent of the moneyed capital" and the "relation of its employment, in point of competition, to the business of * * * national banks." The *law* of "competition" is "to ascertain the precise meaning to be given the statute as applied to the facts in hand in order to determine whether the particular moneyed capital and the particular competition * * * are moneyed capital and competition within the spirit and purpose of the statute." Ultimate decision is to be made by the application of the *law* of "competition" to the conclusions reached as to factual competition to determine whether the competition is of such a *character or quality* that it will substantially interfere with the operation and proper functioning of national banks and thus constitute a hostile and unfriendly discrimination against the business of national banks and discourage investments in national bank shares.

If competition is found to be substantial in amount but not of the kind or quality which evidences an intent to discriminate against national bank shares or create an unfriendly or hostile attitude against the business of national banks and thus jeopardize the national banking system, such competition is not "substantial" as a matter of law, as the phrase "substantial competition" is used in the decisions interpreting § 5219. [19]

[19]

In some cases the courts have used the phrase "other moneyed capital" as being limited to capital employed in substantial com-

It clearly follows that the phrase "substantial competition" does not mean competing however keen or large in amount, within a limited segment of the national banking business. It means competition, of a serious character, with the *major or characteristic functions* of national banking business. It is believed this interpretation and application of "substantial competition" has been the concern of the courts in deciding the § 5219 cases. Viewing "substantial competition" in this light, it is of course necessary to determine the nature and character of the institutions competing, as well as the employment of their capital, to see what phases of the business of national banks could be adversely affected if such moneyed capital were tax exempt or taxed at a lower rate than national bank shares. This was well recognized by this Court in *First National Bank of Shreveport v. Louisiana Tax Commission, supra*, (1933) 289 US 60, which realistically approached this problem and held that savings and loan associations were not comparable and were of a completely different character than national banking associations. Therefore, they could not be in substantial competition as a matter of law.

Appellees' witness Professor George Walter Woodworth, Professor of Finance at the School of Business Administration, University of Michigan, who testified at length concerning the nature and activities and economic structure of commercial national banks, mutual banks, and savings and loan associations, concluded that savings and loan associations were not in substantial competition in a true, factual, or economic sense with appellant or other national banks. Only brief references to his testimony have been made here.

petition with the business of national banks, while, in other cases, the courts have referred to "moneyed capital" as the kind of capital that can compete in a legal sense.

Verbatim reading of his testimony clearly indicates the true nature of the competitive situation at bar (803a-910a). [20]

The Michigan Supreme Court specifically found that

“The record in this appeal discloses that Michigan building and loan associations operated in a narrow, restricted field, are markedly different in character, purpose and organization from national banks, and are not in (substantial competition) with national banks.” (68b)

It is therefore clear that the appellant has not met the tests of “substantial competition” within the purview of § 5219 and thereby has failed to present a substantial federal question for review by this Court.

2.

**APPELLANT HAS NOT PROPERLY RAISED A
FEDERAL QUESTION.**

The foregoing analysis of the applicable statutory and case law establishes that a proper federal question in the instant case can be predicated only upon:

(1) Changes in the *character* and *purpose* of savings and loan associations doing business in Michigan in 1952 rendering inapplicable the partial exemption rule.

[20]

His testimony is analytical, instructive and informative. It was developed in reference to the specific circumstances of this cause. It was, significantly, the only expert opinion offered at the trial of this cause concerning the comparison of national banks and savings and loan associations.

(2) A showing that the tax structure of Michigan evidences, on the part of the Michigan legislature, a hostile and unfriendly discrimination against investors in national bank stock.

Since appellant does not contend that either of these conditions existed in 1952, it has not laid a foundation to properly raise a federal question for review and adjudication by this Court.

3.

**THE DECISION OF THE STATE COURT
IS CONCLUSIVE.**

The trial court, after an exhaustive analysis of the applicable decisions of this Court, stated:

“* * * I conclude:

“1. Since 1887, the Courts have consistently held in every case squarely involving the question that the state may exempt or prefer on the ground of public policy mutual savings bank and other like institutions, provided such exemption is based on just reason and is not made for the hostile purpose of an unfriendly discrimination with national banks.

“2. That the power of the State to make such exemptions on the ground of public policy is an important one, grounded in history and on precedent. The intention of Congress to destroy it should not be lightly inferred.

“3. The 1923 and 1926 amendments to section 5219 and the amendments to the Federal Reserve Act

broadening the powers of the national banks were not intended to take from the State such long established and well recognized power.

"4. That from their beginnings and continuously throughout their history, building and loan associations have been similar in character and purpose to and of the same general class of mutual thrift and home financing institutions as mutual savings banks.

"5. That Congress in the Home Owners Loan Act of 1933 definitely recognized and approved such classification of savings/building and loan associations and the propriety of different tax treatments of banks and such associations and in effect, said that money invested in such associations is not moneyed capital in competition with the business of national banks.

"6. That Michigan's tax treatment of savings/building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks." (41b-42b)

These conclusions were favorably reiterated by the Michigan Supreme Court (50b-51b). In addition, the Supreme Court of Michigan specifically found:

(7) "*The record in this appeal discloses that Michigan building and loan associations operated in a narrow, restricted field, are markedly different in character, purpose and organization from national banks, and are not in 'substantial competition' with national banks.*" (68b) (Italics added)

(8) "The record establishes that there was prac-

tical equality of the total tax imposed upon building and loan associations and upon national banks, and any difference would be justified as partial exemptions under the decisions of the supreme court of the United States quoted above. The restriction contained in RS § 5219 has to do with the actual incidents and practical burden of the tax imposed. • • • (68b)

Findings "4," "6" and "8" above are factual in nature and conclusively indicate that the partial exemption cases are dispositive of the federal question sought to be raised by the appellant.

Even assuming that the partial exemption rule is no longer applicable because findings of fact "4," "6" and "8" were in error and the argument of appellant in this cause were otherwise valid, the finding of the Michigan Supreme Court that there was no "substantial competition" (Finding "7" above, a mixed question of fact and law under the *Hartford* case) between the 16 savings and loan associations in question and the appellant national bank is still conclusive. .

RELIEF.

It is respectfully submitted, for the reasons herein stated, that this honorable Court should either dismiss the appeal of the appellant or affirm the judgment of the lower court.

Respectfully submitted,

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ADDENDUM A

THE TAXATION OF INTANGIBLE PROPERTY IN MICHIGAN

The State of Michigan has always taxed the shares of national banks. Prior to 1939, certain shares were taxed pursuant to the statutory formula under the ad valorem tax law, which covered all real and personal property in Michigan.^[211] It was very difficult, if not impossible, to subject to ad valorem taxation intangible personal property at the ordinary ad valorem rates. It is a matter of common historical knowledge that such intangibles were not disclosed for ad valorem taxation purposes and that it was impossible for local assessors to ferret out intangible property and place it on the local ad valorem property tax rolls. In an effort to meet this problem, many states provided for the taxation of intangible personal property at a much lower rate than the ad valorem rate. By lowering the rate on intangible property, these states hoped to get fuller disclosure of such properties for tax purposes. In many states, even though the new intangibles tax rate was only a fraction of the old ad valorem tax rate, the amount of the tax received from intangible property increased.

By the enactment of the intangible tax act in 1939, bank shares were taxed in a manner similar to the shares of other financial institutions and corporations — at a rate of 6% of the divided income but not less than 1/10th of one per cent or more than 3/10ths of one per cent per par, face or contributed value of the share.^[221]

[211]

Act 206, Mich. Pub. Acts 1893 [Mich. Comp. Laws § 211.8(8); Mich. Stat. Ann. (Henderson) § 7.8(8)].

[221]

Act 301, Mich. Pub. Acts 1939 [Mich. Comp. Laws § 205.131, et seq.; Mich. Stat. Ann. (Henderson) § 7.556(1), et seq.]

Subsequent to the original enactment, amendments changed the rates and as to bank shares, provided for the collection of the tax at the source.^[23]

In 1952 the legislature amended the intangibles tax act and provided that, in the case of income-producing bank shares, the tax should be measured by $3\frac{1}{2}\%$ of income or $1/10$ th of one per cent of par value, whichever is greater. A tax at the same rate was imposed upon all other intangibles with the exception of bank deposits and savings and loan shares, which were taxed at the rate of $1/25$ th of one per cent to the savings shareholder or the bank depositor. However, these taxes were required to be returned by the institutions. They could elect to absorb them.

In 1952 the legislature further amended the act to provide for an additional intangibles tax on shares of banks and trust companies equal to 4 mills per dollar of the book value. Before this 4-mill tax became due and payable, the legislature in 1953 adopted Act 9, effective March 25 of that year, which is the statute in question here. It provided that for the calendar year 1952 and thereafter, the exclusive tax on all shares of banks and trust companies should be $5\frac{1}{2}$ mills per dollar, measured by the capital, surplus and undivided profits represented by each share of the common stock for such year. Preferred stock of any such institution was taxed at the same rate.^[24]

[23]

Act 301, Mich. Pub. Acts 1939, as amended by Act 231, Mich. Pub. Acts 1941; Act 165, Mich. Pub. Acts 1945; Act 175, Mich. Pub. Acts 1947; Act 308, Mich. Pub. Acts 1949; and Acts 76 and 246, Mich. Pub. Acts 1951.

[24]

Act 9, Mich. Pub. Acts 1953 [Mich. Comp. Laws 205.132a; Mich. Stat. Ann. (Henderson) §7.556(2)]

OTHER TAXES IMPOSED IN MICHIGAN ON FINANCIAL BUSINESS IN 1952

In 1952, federal and state savings and loan associations were taxed at the rate of 1/10th of a mill on authorized capital stock.^[25] Foreign corporations doing business in Michigan were subject to the same tax, the amount of their taxable property being determined in accordance with a statutory formula.^[26]

All financial businesses (individuals, partnerships, corporations) holding tangible personal property and real prop-

[25]

Act 183, Mich. Pub. Acts 1952 [Mich. Comp. Laws § 450.308, et seq.; Mich. Stat. Ann. (Henderson) § 21.203, et seq.]

By Act 144, Mich. Pub. Acts 1954 [Mich. Comp. Laws § 450.303, et seq.; Mich. Stat. Ann. (Henderson) § 21.203, et seq.], the legislature repealed the franchise and privilege taxes imposed on foreign and domestic building and loan associations.

By Act 157, Mich. Pub. Acts 1954 [Mich. Comp. Laws § 489.29, et seq.; Mich. Stat. Ann. (Henderson) § 23.572, et seq.], the legislature imposed a privilege tax on domestic building and loan associations equal to 1/4th mill on the amount of capital and reserves; and a franchise tax equal to 1/10th mill on authorized capital.

By Act 158, Mich. Pub. Acts 1954 [Mich. Comp. Laws § 489.201, et seq.; Mich. Stat. Ann. (Henderson) § 23.591, et seq.], foreign and state building and loan associations were subject to a privilege tax equal to 1/4th mill on capital and reserves and a franchise tax equal to 1/10th mill on paid-in capital.

By Act 180, Mich. Pub. Acts 1954 [Mich. Comp. Laws § 489.371, et seq.; Mich. Stat. Ann. (Henderson) § 23.589(1), et seq.], federal savings and loan associations were subject to a privilege tax equal to 1/4th mill on capital and reserves.

[26]

Act 85, Mich. Pub. Acts 1921, as amended by Act 183, Mich. Pub. Acts 1952 [Mich. Comp. Laws § 450.303; Mich. Stat. Ann. (Henderson) § 21.203]

erty in Michigan pay uniform ad valorem taxes,^[27] (except in the case of banks and trust companies as to personality)^[28] the amount of which is determined by the local rate.

Domestic insurance companies are subject to an annual tax of 5 mills, measured by capital, surplus and unassigned funds. The maximum tax is \$50,000.^[29] Foreign insurance companies pay premium taxes ranging from 2% to 3% of their gross premiums received from Michigan sources.^[30]

Federal and domestic credit unions are exempt from all taxation except real and tangible personal property taxes.

All other financial businesses other than national banks, including state banks and trust companies, were subject to miscellaneous state tax measures, which included use tax on their purchases and sales tax on their sales, being of the nature that could not be imposed upon national banking associations under the provisions of § 5219.

[27]

Act 206, Mich. Pub. Acts 1893 [Mich. Comp. Laws § 211.1, et seq.; Mich. Stat. Ann. (Henderson) § 7.1, et seq.]

[28]

Act 261, Mich. Pub. Acts 1949 [Mich. Comp. Laws § 211.9; Mich. Stat. Ann. (Henderson) § 7.9]

[29]

Act 180, Mich. Pub. Acts 1952 [Mich. Comp. Laws § 505.1; Mich. Stat. Ann. (Henderson) § 24.64(1)]

[30]

Act 91, Mich. Pub. Acts 1923 [Mich. Comp. Laws § 512.17; Mich. Stat. Ann. (Henderson) § 24.105]

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

**NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (THREE RIVERS,
MICHIGAN), COMMERCIAL NATIONAL BANK OF
IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON,
and THE FIRST NATIONAL BANK AND
TRUST COMPANY OF KALAMAZOO**, banking associations
organized under the laws of the United States,

Intervening Plaintiffs,

vs.

**STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and
LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,**

Appellees.

**ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN**

**Brief of Appellant
Opposing Appellee's
Motion to Dismiss or Affirm**

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (THREE RIVERS,
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IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON,
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Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and
LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

Brief of Appellant
Opposing Appellee's
Motion to Dismiss or Affirm

In its Motion to Dismiss or Affirm, appellee advances a series of propositions which are basically and fundamentally erroneous.

**The Decision of the State Court
is not Conclusive upon this Court**

Clearly contrary to the rulings of this Court is appellee's proposition (Br.* 36-38) that the decision of the state court is here **conclusive,**** and that this Court is foreclosed from reviewing the substantial, important and far-reaching Federal question raised.

It was undisputedly recognized by the courts below that there was an important, basic federal question here involved; that the question was duly raised by appellant, and that it was the only question in the case.¹

Contrary to appellee's suggestion, surely this Court is not foreclosed by the state court's decision from a review of this Court's own decisions or from determining what the law is or should be upon any Federal question raised. Furthermore, whether the decision of the court below on this Federal question (and corollaries thereto) be regarded as a decision based on findings of fact or conclusions of law, or both, it is clear that this Court is not concluded from reviewing the facts in order to correctly apply the law. As was said in *First National Bank of Hartford v. Hartford*, 273 U.S. 548, 552; 71 L. Ed. 771:

"The validity of the tax complained of depends upon whether or not the moneyed capital in the state thus favored is employed in such a manner as to bring it into substantial competition with the business of national banks . . . The question is thus a mixed one of law and

*"Br" refers to appellee's "Motion to Dismiss or to Affirm."

**Emphasis throughout is that of appellant, unless otherwise indicated.

¹358 Mich. 611, 614 (Jurisdictional Statement 8; 45b); see Trial Court opinion (Jurisdictional Statement 2b, and 7b where the Court particularly noted that "this question [is] of importance to the states, the national banks and the savings/building and loan associations.")

fact, and in dealing with it we may review the facts in order correctly to apply the law . . . Also, as the case is brought here from a state court for review on the ground that a federal right there set up was denied, **this Court is not concluded by a finding of the state court** that the asserted right is without basis in fact."

See *First National Bank of Guthrie Center v. Anderson*, 269 U.S. 341, 348; 70 L. Ed. 295, 302.

**The Michigan tax is discriminatory within the
meaning of R. S. 5219.**

R. S. 5219 clearly establishes the basis of comparison for determining discrimination. When the tax, as here, is upon national bank shares,

" . . . the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens . . ."

This necessarily involves, as this Court has recognized, a comparison between the tax burden imposed upon national bank shares and that imposed upon "other moneyed capital in the hands of individual citizens." It is not disputed in this case that shares in savings and loan associations are "moneyed capital in the hands of individual citizens."

In *People v. Weaver*, 100 U.S. 539, 545; 25 L. Ed. 705, the factors to be considered in making the comparison are described:

"Congress had in its mind an **assessment**, a **rate** of assessment, and a **valuation**; and, taking all these together, the taxation on these shares was not to be greater than on other moneyed capital."²

²Emphasis that of the Court.

In *Weaver*, the rate was the same, but the valuation was different. "Other moneyed capital" was valued on a lower basis, and the result was a discrimination prohibited by R. S. 5219. Here, the converse is true, the basis of valuation of national bank shares and savings and loan shares is similar³, but the rate of assessment is different, national bank shares being taxed at a rate of 8 to 13 times greater than the tax imposed on "other moneyed capital" (shares of savings and loan associations). The result is the same, a discrimination prohibited by R. S. 5219.

This Court said in *Pelton v. National Bank*, 101 U.S. 143, 146; 25 L. Ed. 901:

"It is sufficient to say that we are quite satisfied that any system of assessment of **taxes which exacts** from the owner of the shares of a national bank **a larger sum in proportion to their actual value** than it does from the owner of other moneyed capital **valued in like manner**, does tax them at a greater rate within the meaning of the act of Congress."

Where, as here, the bank shares and "other moneyed capital" are "valued in like manner," the only remaining factor for consideration in determining whether there is discrimination under R. S. 5219 is the rate of tax imposed upon the bank shares as compared with the rate imposed upon "other moneyed capital." This is precisely what this Court did in *Merchants' National Bank of Richmond v. City of Richmond*, 256 U.S. 635; 65 L. Ed. 1135 (tax on bank shares approximately 3.5 times greater than tax on other competing moneyed capital); *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239; 76 L. Ed. 266 (approximately 6 times greater); *Minnesota v. First National Bank of St. Paul*, 273 U.S. 561; 71 L. Ed. 774 (approximately 8 times greater); and *First National Bank of Guthrie Center v. Anderson*,

³See Jurisdictional Statement, pp. 25-6, and footnotes 9-12.

269 U.S. 341; 70 L. Ed. 295 (approximate - 29 times greater).

In the case at bar, where valuation is on the same basis, but the tax on national shares is at a greater rate, there are no problems such as appellee suggests relative to "total tax burden," the lack of "equivalent tax burden," greater "tax impact" or lack of "substantial tax equivalence." Such problems arise only in cases where there are different measures or methods of valuation⁴ or entirely different methods or systems of taxation,⁵ as between national bank shares and other moneyed capital.

Appellee seeks to avoid the plain and obvious meaning of R. S. 5219, as above described, through the use of two "tax burden" comparative tests, not consistent with nor permitted by R. S. 5219. Appellee, in effect, urges the Court to regard the tax on bank shares as a tax on the **total assets** (without deducting liabilities) of the bank as compared with total assets of savings and loan associations, and so regarded, appellee claims that the tax is not discriminatory. There are two things wrong with this proposition. It ignores the plain language of the statute, which permits a tax on **shares**, not on **total assets**, of a national bank, and it studiously avoids any discussion of *Minnesota v. First National Bank*, 273 U.S. 561; 71 L. Ed. 774, which is directly to the contrary. In *Minnesota*, the state likewise urged an asset comparison and the Court explicitly rejected it, saying (273 U.S. 564):

"This argument ignores the fact that the tax authorized by §5219 is against the holders of the bank shares and is **measured by the value of the shares, and not by the assets of the bank without deduction of its liabilities**, *Des Moines National Bank v. Fairweather*, 263 U.S. 103, and

⁴*People v. Weaver*, *supra*.

⁵*Tradesmen's National Bank v. Oklahoma*, 309 U.S. 560; 84 L. Ed. 947.

that the **bank share tax must be compared with the tax assessed on competing moneyed capital of individuals** invested in credits, or the tax on capital invested by individuals in the shares of corporations whose business competes with that of national banks."

Nor is appellee's second suggested basis for comparison valid. Appellee contends that the tax burden should be related to "the reserves and undivided profits of the savings and loan associations [and] with the actual value of national bank stock" [**capital, surplus, and undivided profits**], erroneously **excluding** the substantial amount invested in shares of **capital** of the savings and loan associations.⁶ This comparison is predicated upon appellee's erroneous assertion that the investment in a savings and loan association is a deposit-debt rather than a share-equity.

Initially it is clear that an investment in a savings and loan association is not a deposit-debt, but is a share of stock invested for profit, in a privately managed, mortgage business corporation.

In *Michigan Savings and Loan League v. Finance Commission* (1956), 347 Mich. 311, 319; 79 N.W. 2d 590, the plaintiff:

⁶As to this manner of comparing "tax burden", appellee's own witness, Professor Woodworth, stated: "I rejected that in my thinking as a proper basis of comparison." (863a).

Appellee cites *People v. Weaver*, 100 U. S. 539; 25 L. Ed. 705, and *Davenport Bank v. Davenport Board of Equalization*, 123 U. S. 83; 31 L. Ed. 94, in support of the foregoing comparison. However, as pointed out on page 3, *supra*, *Weaver* does not support appellee, but does support appellant. Nor does *Davenport* support the proposition that the capital invested in savings and loan association shares may be excluded in valuing other moneyed capital. In *Davenport*, which involved a stock corporation savings bank (unlike those in New York and Massachusetts which had no capital stock), this Court held: "... the same rate per cent is assessed upon the capital of the savings banks as upon the shares of the national banks."

"... argued, **in substance**, that investments in savings and loan associations of the character involved in this case **should not be regarded as stock purchases**, that the investor **is actually depositing funds for safekeeping**, that the transaction is **analogous to a deposit in the savings department of a bank**..."⁷

Rejecting this contention, the Michigan Supreme Court held (322):

"This Court has recognized that investors in savings and loan associations are subscribers to, or purchasers of, stock therein..."

"... It may not accept deposits in the sense that such are received by banks..."⁸

⁷There, the Attorney General successfully opposed such contention. Here, he now argues directly to the contrary.

⁸Unlike a depositor, a shareholder in a savings and loan association is not a creditor. He is a shareholder in a corporation engaged in the mortgage business. He assumes the risk of the venture. The Michigan statute expressly provides that he is a shareholder—and may not be a depositor. The Michigan and Federal statutes expressly prohibit savings and loan associations from receiving deposits. Mich. C. L. 1948, Sec. 489, 37; M. S. A. 1957 Rev., Sec. 23.580; Fed. Code Ann., Sec. 1464 (b). A depositor receives a contractually fixed rate of interest, regardless of whether the bank operates at a profit or loss. A shareholder in a savings and loan association receives dividends, if declared, the payment and amount of which are dependent upon whether the operations of the corporation are profitable. Shareholders in a savings and loan association vote for and ultimately control the operations of the association; whereas depositors have no voice in the operations of a bank. Upon liquidation, shareholders in a savings and loan association share pro rata in the entire equity in the corporation, capital, surplus and undivided profits. Upon liquidation, a depositor receives merely repayment of his fixed debt.

Appellee, relying on dicta in *Amoskeag Savings Bank v. Purdy*, 234 U. S. 373; 58 L. Ed. 274 ignores the fact that *Amoskeag* related to New York savings banks, which had no shareholders but only deposit-debtors.

Moreover, even if shareholders in savings and loan associations were depositors, appellee's comparison is not permissible under R. S. 5219. The Federal statute requires that national bank shares shall not be taxed at a greater rate than **other moneyed capital** in the hands of **individual citizens**. Whether shareholder (as appellant submits) or depositor (as appellee contends), the investment in savings and loan associations by individuals is other moneyed capital, within the meaning of R. S. 5219. *Mercantile Bank v. New York*, 121 U.S. 138, 157; 30 L. Ed. 895. Since this moneyed capital is taxed at a substantially lower rate than national bank shares, R. S. 5219 is violated.

Throughout, appellee urges (Br. 13, 19), and the lower court held, that the Michigan tax is not discriminatory nor violative of R. S. 5219, because—

“Michigan's tax treatment . . . does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks.”

In *Hartford*, supra, the same contention was made by the appellee and had been sustained by the Supreme Court of Wisconsin. However, this Court unequivocally rejected this position, holding (273 U.S. 560):

“But a consideration of the entire course of judicial decision on this subject can leave no doubt that state legislation and **taxing measures which by their necessary operation and effect discriminate** against capital invested in national bank shares in the manner described **are intended to be forbidden.**”

Michigan cannot exempt or preferentially tax competing moneyed capital (shares in savings and loan associations) without violating R. S. 5219.

Appellee urges that even though shares in savings and loan associations are “other moneyed capital in the hands

of individual citizens of such State coming into competition with the business of national banks," within the meaning of R. S. 5219, and even though shares of national banks are taxed "at a greater rate," within the meaning of R. S. 5219, the State of Michigan has, nevertheless, not violated R. S. 5219. To state such a proposition is virtually to answer it.

Appellee cites (Br. 21) several cases of this Court wherein appellee claims the so-called "partial exemption" rule has been applied. These cases are not here applicable. See appellant's Statement as to Jurisdiction (pp. 28 et seq.). We respectfully submit that no doctrine of this Court permits a state to discriminate against national bank shares in favor of other moneyed capital employed under private management, for profit, in competition⁹ with a substantial phase of the business of national banks.

**The Home Owners Loan Act of 1933 does
not Repeal R. S. 5219 by Implication.**

R. S. 5219 was enacted to prevent states from discriminating against national bank shares in favor of other moneyed capital employed in substantial competition with the business of national banks. *Hartford*, supra. Congress provided for no exemptions, exclusions or exceptions of any other competing moneyed capital.

Notwithstanding, appellee erroneously urges (Br. 4-7) and the lower Court held, that the Home Owners Loan Act of 1933 **by implication** evidences a Congressional intent to exclude shares in savings and loan associations from the

⁹Appellee also places great reliance upon the circuit court case of *Hoenig v. Huntington National Bank*, 59 F. 2d 479, certiorari denied 287 U.S. 648 (Br. 25-29). Contrary to appellee's contention, the addendum attached hereto conclusively shows and the record in *Hoenig* demonstrates, that, unlike the instant case, savings and loan associations in *Hoenig* were not in substantial competition with the **then** business of national banks in loaning money on the security of residential mortgages.

operation of R. S. 5219. There is, however, nothing in the Home Owner Loan Act or its Congressional history, that supports such a conclusion. The Act provides merely that states may not impose a greater tax on federal associations than that imposed upon like local associations. The Act is **silent** as to **how shares in federal associations** shall be taxed by a State and in no way prescribes **how state associations or their shares shall be taxed**. Such Congressional prohibition is in no way inconsistent with the equally clear injunction of R. S. 5219 in respect to shares of national banks.

In protecting federal savings and loan associations from discrimination in favor of like state institutions, the 1933 Act in no way relieves a state from the obligation to safeguard national bank shares from state discrimination in favor of other moneyed capital (whether or not invested in state or federal savings and loan associations), when, as here, in 1952 and at the present time such moneyed capital is employed in keen competition with a substantial phase of the business of national banks. Certainly the Home Owners Loan Act does not expressly repeal R. S. 5219, and, contrary to the lower court's conclusion, no partial repeal of R. S. 5219 should be implied. As this Court has often held, it does not look with favor upon a claim of repeal of important legislation by implication.

There is Competition Within the Meaning of R. S. 5219

Appellee urges a proposition with regard to the question of competition (Br. 30-35) which, if sustained, as it was by the lower courts, would eliminate the protection afforded by R. S. 5219 in the taxing of national bank shares. Appellee contends as a matter of **law** that there cannot be substantial competition because savings and loan associations operate in a "narrow and restricted field" and do not perform the "major or characteristic functions" of the national banking business.

This proposition ignores the compelling evidence of economic competition summarized at pp. 10-14 of Appellant's Jurisdictional Statement. This so-called "narrow and restricted field" of home mortgage financing is in fact one of the major phases of appellant's business and of the business of all national banks in Michigan. The investment of capital by savings and loan associations in that business is even larger. That this competition is "substantial" needs no showing as to its relation to the "total financial business" in Michigan during the tax year in question, as appellee suggests (Br. 9). The pivotal consideration is whether the capital thus employed is "substantial in amount when compared with the capitalization of national banks". *Hartford*, supra, p. 558. This has been amply demonstrated (Appellant's Jurisdictional Statement, p. 15).

Moreover, the "major or characteristic functions" of a national bank, according to appellee, are its so-called "monetary functions." Serious competition cannot develop, according to appellee, except as respects these functions.¹⁰ But even a cursory examination of the so-called "monetary functions" reveals that no institution, other than national and state

¹⁰The monetary functions, according to appellee's witness, Professor Woodworth, are: (a) providing a safe and uniform currency; (b) serving as a depository for the federal government and assisting the treasury in its fiscal operations, and (c) providing a safe check book money for business and the general public (843a).

However, although the Professor characterized the so-called "monetary functions" of a bank as "primary" and the making of loans and discounts as "secondary functions", he readily admitted that the primary or monetary functions earned little money for the bank and that for it to exist and survive, it must earn most of its money by making loans and discounts (881a, 882a). Clearly, unless R. S. 5219 protects national banks in the performance of their "secondary functions"—loans and discounts—they would be unable to perform their primary or any other functions.

banks, perform these functions. The result is to limit competition to state banks, a proposition which this Court and Congress have consistently rejected.

Appellee also poses the question, "How can fundamentally different institutions, which cannot be compared, be said to be in substantial competition' . . . ?" This Court answered that question in *Hartford* when it said (273 U.S. 557) :

"Competition in the sense intended [by R. S. 5219] arises **not from the character of business** of those who compete **but from the manner of the employment** of the capital at their command."

Conclusion

In recent years the loaning of money on the security of residential real estate mortgages has become a vital and important part of the business of national banks. In 1952, this business amounted to 40% of the total loans and discounts of appellant bank, exceeded 20% of its total assets, and provided 26% of its total interest income.

As the Comptroller of Currency of the United States recently testified before Congress:

" . . . banks are finding themselves more and more in competition with . . . Federal and State chartered savings and loan associations . . . [they] are zealous and highly effective competitors . . . for real estate mortgage loans . . . It is our view that any failure to take into consideration [such] competition . . . when considering the subject of bank competition would indicate serious lack of knowledge of basic factors important to banking today and disregard of the elements that go into a determination of the competitive situation in which commercial banks function."

See Statement as to Jurisdiction, pp. 10-14; 38-41.

It is unthinkable that in the light of such development, discriminatory taxation by a state upon shares of national banks in favor of other moneyed capital in the form of shares of savings and loan associations should be countenanced under R. S. 5219.

As we stated at the outset of this case, and as was recognized by the Michigan Supreme Court (358 Mich. 611, 618):

"Appellant's position is set forth in its brief as follows:

"This is not a case of tax avoidance or claimed immunity by appellant. * * * The singularly important and impelling object of this case is to assure tax equality with competitors. The powerful and rapidly growing savings and loan associations (or their shareholders) should be taxed at the same rate as shares in national banks in Michigan, as required under R. S. §5219—regardless of what that rate may be."

We respectfully submit that appellee's motion to dismiss or to affirm be denied and that the Court note jurisdiction to hear and determine the basic Federal question here involved, or, in the alternative, as in *Securities and Exchange Comm. v. Otis & Co.*, 338 U.S. 843; 94 L. Ed. 516, reverse the judgment of the lower court.

Respectfully submitted,

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MICHIGAN NATIONAL BANK

July 29, 1960.

ADDENDUM

Hoening v. Huntington

Pages A-D

ADDENDUM

Hoenig v. Huntington, 59 F. 2d 479 (1932)

Contrary to appellee's claim that *Hoenig* involved actual, substantial competition between national banks and savings and loan associations in Ohio similar to the competition shown in the instant case, the record in *Hoenig* clearly refutes such claim.

In 1926-7 (the tax years involved in *Hoenig*), not only were national banks then prohibited by law (Sec. 24; Federal Reserve Act) from loaning money on the security of residential mortgages for a term in excess of one year, but every banker who there testified was obliged on cross-examination to admit that:

"We have no direct loans on homes" (Archer);

"We do not fill that demand" (Huntington);

"As a rule we do not cater to them" (Stein).

The record in *Hoenig* shows that only $\frac{7}{10}$ of 1% of the plaintiff banks' loaning business in Columbus, Ohio, consisted of real estate mortgage loans, and even that minute percentage was for one year or less, compared to the savings and loan associations' mortgages of 10 to 12½ years. With respect to the 10 to 12½ year loans, the Court of Appeals in *Hoenig* held that **national banks "do not . . . invest their funds generally in this manner"** (59 F. 2d 482).

In contrast, in the instant case, about 40% of plaintiff bank's loaning business are residential mortgage loans on substantially the same terms as those of the associations.

B.

Hence, in the field in which Columbus, Ohio building associations primarily invested their funds, there could be no real competition as a matter of law, and there was none as a matter of fact. See chart, *infra*, pp. C and D.

For the foregoing reasons, appellant submits that *Hoenig* was properly decided **on its facts**, and certiorari was properly denied for the same reason which the Court recognized in *First National Bank of Shreveport v. Louisiana*, 289 U.S. 60; 77 L. Ed. 1030—lack of factual competition.

"Hoenig" Facts

**Total Loans of all National Banks
in Columbus, Ohio
Including Plaintiff's**

\$56,133,000

(Hoenig record, p. 36)

**Total Loans of all building and
loan associations in Columbus, Ohio**

\$90,544,234

(Hoenig record, p. 38)

**Total Residential
Mortgage Loans**

\$399,000

(Hoenig record, p. 36)

**Total Residential
Mortgage Loans**

\$89,797,515

(Hoenig record, pp. 38, 39)

**Average Term of Residential
Mortgage Loans**

**1 year maximum
term (12 U.S.C. 371)**

**No testimony as
to average term**

**Average Term of Residential
Mortgage Loans**

10½ to 12½ yrs.

(Hoenig record, p. 39)

**% of Residential Mortgage
Loans to Total Loans**

7/10 of 1%

D

Facts in This Cause

Total Loans of Plaintiff Bank in 7 Cities	Total Loans of all savings and loan associations in 7 Cities
\$148,304,387 (Exh. 3)	\$97,584,865 (Appellant's Jurisdictional Statement, p. 13)
Total Residential Mortgage Loans	Total Residential Mortgage Loans
\$59,737,315 (Exh. 3) (Including \$8,317,457 home improvement loans.)	\$97,584,865* (Appellant's Jurisdictional Statement, p. 13)
Average Term of Residential Mortgage Loans	Average Term of Residential Mortgage Loans
Conventional—10-yrs. FHA { 20-25 yrs. VA { (Appellant's Jurisdictional Statement, p. 12)	Conv.—11-12 yrs. FHA { 20-25 yrs. VA { (Appellant's Jurisdictional Statement, p. 12)
% of Residential Mortgage Loans to Total Loans	
40%	

*Virtually all loans were secured by residential real estate, although some commercial loans were made.

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE,

THE FIRST NATIONAL BANK (THREE RIVERS,
MICHIGAN), COMMERCIAL NATIONAL BANK OF
IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON,
and THE FIRST NATIONAL BANK AND
TRUST COMPANY OF KALAMAZOO, banking associations
organized under the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and
LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

Brief of Appellant

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

**NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (THREE RIVERS,
MICHIGAN), COMMERCIAL NATIONAL BANK OF
IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON,
and THE FIRST NATIONAL BANK AND
TRUST COMPANY OF KALAMAZOO**, banking associations
organized under the laws of the United States,

Intervening Plaintiffs,

vs.

**STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and
LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,**

Appellees.

**ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN**

BRIEF OF APPELLANT

Appellant, Michigan National Bank, a banking association organized under the laws of the United States, appealed from the judgment of the Supreme Court of the State of Michigan entered on February 25, 1960, affirming a judgment for appellees by the Court of Claims for the State of Michigan.

The judgment sustains a state tax on national bank shares, which appellant contends is discriminatory, is at "a greater rate" than the tax upon other money capital invested in shares of savings and loan associations, which compete with substantial phases of the business of national banks and is violative of R.S. 5219.

OPINIONS BELOW

The opinion of the Michigan Supreme Court is reported in 358 Mich. 611; 101 N W 2d 245 (R. 1335). The opinion of Judge Searl, of the Michigan Court of Claims, is not reported, but is set forth in the Record R. 60a - 112a.

JURISDICTION

The judgment of the Michigan Supreme Court was entered on February 25, 1960 (R. 1360). The appellant's claim of direct appeal was filed on June 17, 1960, and probable jurisdiction was noted by this Court on October 10, 1960. The jurisdiction to review this decision by direct appeal is conferred by Title 28, U. S. Code, Sec. 1257(2). *First National Bank v. Hartford*, 273 U.S. 548, 550, 71 L. Ed. 767; *Merchants' National Bank v. Richmond*, 256 U.S. 635, 637, 65 L. Ed. 1135; *First National Bank v. Anderson*, 269 U.S. 341, 346, 70 L. Ed. 295.

STATUTES INVOLVED

R.S. 5219

Revised Statutes of the United States 5219 (12 U.S.C., Section 548; 13 Stat. 111, as amended by 15 Stat. 34, 42 Stat. 1499, and 44 Stat. 223), hereinafter referred to as R. S. 5219. The following are the pertinent provisions thereof:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States

may (1) **tax said shares*** or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with;

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others . . .

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

The tax in this case is a tax on national bank shares. Since a tax on shares is "in lieu of the others" (Sec. 1 (a)), the full text of the statute relating to the other three methods of taxation is not here set forth. The full text is set forth herein as Appendix A.

Michigan Tax on National Bank Shares

Act No. 9, Public Acts of Michigan, 1953

Act No. 9 of the Public Acts of Michigan for 1953 (Sec. 205.132a, C. L. Mich., 1948, 1953 Supp.; M. S. A. Sec. 7.556 (2a)), the tax here in question, is hereinafter referred to as Act 9. Act 9 was an amendment to the general Michigan Intangibles Tax law. The following are the pertinent provisions thereof:

"For the calendar year 1952 . . . and for each year thereafter, or a portion thereof, there is hereby levied

*Emphasis throughout is that of appellant.

upon each resident or nonresident owner of shares of stock of national banking associations located in this state and banks and trust companies organized under the laws of this state, and there shall be collected from each such owner an annual specific tax on the privilege of ownership of each such share of stock, whether or not it is income producing, equal in the case of a share of common stock to $5\frac{1}{2}$ mills upon each dollar of the capital account of such association, bank or trust company represented by such share, and equal in the case of a share of preferred stock to $5\frac{1}{2}$ mills upon the par value of such share."

The full text of Act 9 is set forth herein as Appendix B.

Michigan Taxes on Savings and Loan Associations and their Shares

C. L. '48, Sec. 205.132; M.S.A. Sec. 7.556(2) requires that federal and state savings and loan associations on behalf of their shareholders pay an intangibles tax of only $\frac{1}{2}$ of 1% ($\frac{1}{2}$ mill) on the paid-in value of their shares. This is the same intangibles tax law which was amended by Act 9, above, in respect to bank shares.

C. L. '48, Sec. 450.304a; M.S.A. Sec. 21.206 requires that state savings and loan associations (but not federal associations) pay an additional privilege tax of $\frac{1}{4}$ mill on the association's capital and legal reserves.

The total statutory tax picture in Michigan as relates to taxes upon national bank shares and savings and loan associations and shares thereof is set forth on pages 47-49 *infra*.

QUESTIONS PRESENTED

Broadly stated, the question is:

1. Is Act 9 of the State of Michigan repugnant to R.S. 5219 in that Act 9 taxes national bank shares at a rate 8 (or more) times greater than "other moneyed capital in the

hands of individual citizens" consisting of shares in state and federal savings and loan associations, which, privately managed and operated for profit, are in direct competition with a substantial phase of the national banking business, to wit, the business of making residential mortgage loans to the public in the same localities, and such moneyed capital is more than 3 times as large as the total capitalization of all national banks in Michigan?

More particularly, with reference to the Michigan Supreme Court's opinion, the questions are:

2. Are savings and loan associations in Michigan which employ large amounts of moneyed capital in direct competition with a substantial phase of the business of national banks, precluded from "coming into competition with the business of national banks" under R. S. 5219, merely because their "character, purpose and organization" are different from national banks and by statute they may not do "a banking business," or "accept deposits"?

3. Under R. S. 5219, is it proper to ignore the fact that Act 9 is a tax upon national bank shares (assets of the bank less liabilities)—at a rate 8 (or more) times greater than is assessed upon other competing moneyed capital—and instead to substitute a different test of discrimination, to wit, comparing the ratio of tax dollars paid to total assets of the respective institutions, without deducting liabilities, thus treating the tax as though it were upon assets—instead of upon shares—of national banks, which is not authorized under R. S. 5219?

4. Notwithstanding that R. S. 5219 was enacted "to prevent the fostering of unequal competition with the business of national banks by the aid of discriminatory taxation," may a state, under a claimed doctrine of "partial exemption," nevertheless discriminate against shares of national banks in favor of other moneyed capital invested by the general public, for profit, in shares of savings and loan associations,

when such associations, privately managed and operating for profit, employ such moneyed capital (three times the capitalization of all national banks in Michigan) in direct competition with a substantial phase of the business of national banks?

STATEMENT OF THE CASE

Act 9 (Public Acts of Michigan, 1953), which amended the Michigan Intangibles Tax and for the year 1952 and thereafter, taxed shares of national banks at a rate approximately eight times greater than that imposed upon moneyed capital invested in shares of domestic savings and loans associations, and thirteen times greater than upon moneyed capital invested in shares of federal associations. See *infra*, pp. 47-49.

The Michigan Supreme Court recognized that (358 Mich. 611, 614) :

"In 1953 (PA 1953, No. 9) the [Michigan] legislature amended the intangibles tax law so as to place both State and national banks in a special and more heavily taxed category, imposing a tax on bank shares at the rate of $5\frac{1}{2}$ mills (\$5.50 per \$1,000) 'on the privilege of ownership of each * * * share of stock' based on the 'capital account' of each bank."

In singling out bank shares, the legislature left untouched the much lower rate of intangibles tax (\$.40 (40 cents) per \$1,000) * imposed on savings and loan associations and their shareholders. The undisputed facts show that these associations represented large and increasing aggregations of moneyed capital invested by the general public for profit, which was, and is, employed in direct and keen competition with a substantial phase of the national banking business in Michi-

*In addition, state savings and loan associations are subject to a privilege tax of \$.25 (25 cents) per \$1,000. Since neither national banks nor federal savings and loan associations obtain their privilege of doing business from the State of Michigan, they were not subject to this tax. See footnote 41, *infra* p. 48.

gan, i.e., the residential mortgage loan business. In the tax year in question (1952) moneyed capital invested in shares of savings and loan associations in Michigan exceeded \$468,000,000 (Exhibit 221; R. 1284a), which has more than trebled in the last seven and one-half years and at the present time exceeds \$1,600,000,000.⁽¹⁾

Appellant contends that this moneyed capital enjoys a distinct competitive advantage because of its greatly favored tax treatment by the State of Michigan; and that the owners of national bank shares—and national banks competing with savings and loan associations—are thereby clearly being discriminated against to their serious detriment.

Such discrimination, we submit, is contrary to and in violation of R. S. 5219 which was enacted by Congress for the purpose of safeguarding national banks, and precluding tax discrimination by states favoring local moneyed capital, so as to secure the integrity of national bank capital and assure national banks and the owners of the shares thereof that states would not hamper or destroy national banks by such discriminatory taxes.

Appellant, Michigan National Bank, has banking offices in the following cities in Michigan: Lansing, Battle Creek, Flint, Grand Rapids, Marshall, Port Huron, and Saginaw, in all of which cities appellant is in sharp competition with savings and loan associations in the residential mortgage business. In each of the cities where appellant bank did business, the full impact of that competition was felt.

Prior to the passage of Act 9, appellant paid without protest for the year 1952 a tax of \$18,500 on its shares and \$100,318.24 on its deposits. Act 9 imposed an additional tax of \$49,929.27 on appellant's shares, which amount appellant paid under protest on behalf of its shareholders, and

⁽¹⁾Monthly Report of Federal Home Loan Bank Board.

for which amount appellant commenced this suit, alleging the federal question here involved, i.e., that Act 9 is violative of R. S. 5219.^[2]

Appellant's position throughout this litigation has been that:

"This is not a case of tax avoidance or claimed immunity by appellant. * * * The singularly important and impelling object of this case is to assure tax equality with competitors. The powerful and rapidly growing savings and loan associations (or their shareholders) should be taxed at the same rate as shares in national banks in Michigan, as required under RS §5219—regardless of what that rate may be."^[3]

See Michigan Supreme Court Opinion, 358 Mich. 611, 618; R. 1338.

States are prohibited from imposing discriminatory taxes against national banks or their shares.

A state is without power to tax national bank shares.

^[2]Appellant has commenced like actions to recover taxes paid under protest for subsequent years (1953-1959) and has claims in the aggregate amount of \$729,509.71 — of which amount \$541,822.21 is the excess due to Act 9 over the previous intangibles tax on bank shares.

Other national banks in Michigan intervened, namely: Commercial National Bank at Iron Mountain; National Bank of Jackson; First National Bank and Trust Company of Kalamazoo; First National Bank at Three Rivers; and National Bank of Wyandotte. The intervenors' actions were held in abeyance pending the outcome of this appeal.

In addition, the following national banks in Michigan sought to intervene as parties plaintiff, but were denied that opportunity: Community National Bank of Pontiac, The Commercial National Bank of Ithaca, First National Bank of Holland.

^[3]If savings and loan association shares were taxed at the same rate as shares in national banks in Michigan, the State of Michigan would receive an additional Six Million Dollars or more in revenue annually.

except as Congress consents and then only in conformity with the restrictions attached to its consent. See *infra*, p. 28.

As relates to a state "tax on shares" of national banks, which is here involved, Congress by R. S. 5219 Sec. 1(b) has safeguarded national bank shares from discriminatory state taxation by providing that the tax

"shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks."⁽¹⁾

Money Invested in Savings and Loan Associations is "Other Moneyed Capital."

The money invested for profit, in shares of savings and loan associations, and employed by such associations, for profit, in making loans secured by residential and other real estate mortgages is clearly "other moneyed capital" within the meaning of R. S. 5219. See *infra*, p. 29.

National Bank Shares are Taxed at a "Greater Rate" than Other Moneyed Capital.

Act 9 placed bank shares in "a special and more heavily taxed category" (358 Mich. 611, 614) taxing such shares at a "greater rate," 8 or more times the rate imposed on savings and loan associations and their shares. See *infra*, pp. 47-49.

The Moneyed Capital Invested in Savings and Loan Associations "Coming into Competition with the Business of National Banks" is Substantial.

The record in this case is replete with undisputed proof showing the fact of actual and direct competition between national banks and savings and loan associations in Michigan. Both institutions were actively and substantially engaged during the tax year in question, and to date, in seeking and securing in the same localities throughout the State in-

⁽¹⁾A state tax "on shares" is "in lieu of" the other three methods of state taxation on national banks or their shares permitted under the statute. See R. S. 5219, Sec. 1(a).

vestments of the same class, i.e., residential mortgage loans. It further appears without question that this business, insofar as national banks and appellant were and are concerned, represented a substantial phase of their business.

(a) In the tax year in question (1952), and to date, both national banks and savings and loan associations were privately managed financial institutions, operating for a profit in the same localities in Michigan, each making comparable residential mortgage and home improvement loans to the general public.

(b) In 1952 appellant national bank held \$60,000,000 of residential real estate loans^[5], \$18,551,000 of which (2,728 in number) were made by appellant bank during 1952.^[6] This compares with \$97,000,000 of such loans held by savings and loan associations located in cities where appellant bank operated,^[7] \$35,000,000 of which loans (6,498 in number) were made during 1952.^[8]

(c) The residential mortgage business was, and is, a substantial phase of the business of appellant national bank, amounting in 1952 to 40% of its total loans and discounts,^[9] 20% of its total assets,^[10] and from which it derived 26% of its total income.^[11]

(d) In 1952 all national banks in Michigan held \$301,000,000 of such residential real estate loans,^[12] which amounted to 30% of their total loans and discounts, as compared to \$433,000,000 of such loans held by all savings and loan associations in Michigan.^[13]

^[5]Exhibit 3, R. 934a.

^[6]Exhibit 5H, R. 959a.

^[7]See Chart, *infra*, p. 17, and Exhibits therein noted.

^[8]Exhibit 65A, R. 1021a.

^[9]Exhibit 3, R. 934a.

^[10]Exhibit 3, R. 931a.

^[11]Exhibit 205, R. 1266a.

^[12]Exhibit 103, R. 1252a.

^[13]Exhibit 6, R. 960a.

The Michigan Supreme Court recognized that appellant "introduced proof that the loaning of money on the basis of mortgages secured by residential real estate, was a **substantial phase of its business,**" and the Court summarized such proof (358 Mich. 611, 617).

Class of Borrower from Both Institutions is the Same.

Appellant bank's officers and competing savings and loan associations' officers testified that all economic and income groups comprised their residential mortgage borrowers. Both solicited business from the public at large in the same localities in which they both did business. Neither loaned to any particular class of borrowers; rather "to all classes of people in the community" (R. 207a, 629a, 640a, 647a); "the run of the mine, as they came," (Mr. Nelligan, Vice President, Michigan National Bank, R. 619a); "across the board to all classes of people," (Mr. Pheiffer, Executive Vice President, Saginaw Savings & Loan, R. 377a).

Both institutions sought mortgage business from the public generally—professional people, business men, builders, teachers, salaried employees (executive and otherwise), as well as laboring people.^[14] It was admitted without qualification by association witnesses that their institutions loaned to the same class of borrowers as did appellant bank (R. 204a, 377a, 291a, 480a). Savings and loan associations, like appellant bank, considered only two factors in determining whether to make a residential mortgage loan. These factors were the person's ability to repay the loan (his credit rating) and the value of his property.^[15]

Class of Property on which Banks and Savings and Loan Associations Loan Money is Similar.

Not only did both national banks and savings and loan

^[14]R. 207a, 254a, 303a, 436a, 480a, 607a, 619a, 629a, 640a, 647a; Exhibit 77, p. 15, R. 1138a.

^[15]R. 171a, 257a, 258a, 347a, 388a, 436a; Exhibit 73, p. 32; Exhibit 77, p. 11, R. 1136a.

associations solicit the same customers in the same locality, but both institutions relied upon the same type of property to secure their loans, i.e., similar and often identical residential real estate located in the same areas in which they did business (R. 291a, 204a). A substantial number of random examples of loans were offered in evidence, showing that Michigan National Bank or a competing association obtained a mortgage on a certain residence, and thereafter the same residence was later refinanced by the other institution.^[16]

Terms of Mortgage Loans and Mortgages are Comparable.

The terms and conditions of real estate loans and mortgages made by appellant bank and savings and loan associations were identical or substantially the same.

Thus, in 1952, appellant made over \$18,550,000 worth of residential loans secured by F.H.A. (\$10,869,000), V. A. (\$456,000) and Conventional (\$7,245,000) mortgages.^[17] (Exhibit 5H, R. 959a.) During 1952, savings and loan associations, in the same localities as appellant, were also making residential mortgage loans on the security of F.H.A. and V.A. mortgages (\$6,273,000) and Conventional mortgages (\$26,058,000) (Exhibit 200C, R. 1261a).

^[16]R. 205a, 212a, 275a, 291a, 349a, 1079a, 1141a. Sixty-nine examples of refinancing of mortgages by appellant bank of savings and loan association mortgages, and conversely, by savings and loan associations of bank mortgages, were introduced at the trial. Exhibit 102A-11; R. 1244a-49a is an example of such refinancing. To avoid unnecessary duplication the other 68 examples of refinancing in each community in which appellant bank operates, which were introduced at the trial, have not been printed nor have photographs of the residences involved been reproduced in this Record.

^[17]F. H. A. and V. A. mortgage loans are insured by the United States, and for that reason their terms and conditions, strictly controlled by the federal government, were identical—whether the loan be made by a savings and loan association, a national

(Continued on next page)

Each type of mortgage competed one with the other for the favor and needs of the borrower (and the lender). Because F.H.A. and V.A. mortgages were guaranteed by the Government, they carried lower interest rates than Conventional mortgages (4% to 4½% vs. 5% to 6%), were for a longer average term than Conventional mortgages (20 to 25 years vs. 10 to 12 years), and were larger in amount (85% to 100% of appraisal value vs. 50% to 60% of appraisal value). On the other hand, F.H.A. and V.A. loans required more time for approval and closing than Conventional loans (R. 485a, 565a). In 1952 both appellant bank and savings and loan associations were making the same type or types of loan (R. 959a, 1261a). It was common practice for a borrower to finance his residence by use of one type of mortgage from one financing institution, and, subsequently, for the same borrower (or a purchaser from him) to refinance the loan with a competing institution using another type of mortgage.^[18]

The terms and conditions of F.H.A. and V.A. loans were identical. Identical forms provided by the Government were used by both appellant bank and savings and loan associations.^[19] The maximum interest rate, service and insurance

(Continued from page 12)

bank, or any other financial institution or individual. Conventional mortgage loans are those other than loans insured by the Federal Government, normally made by the particular institution. They were generally similar in form and substance to other mortgages made by other lending institutions and persons engaged in the business of loaning money on the security of residential real estate loans.

^[18] (Flint: Exhibits 102A1-102A17; R. 1236a-1249a). As stated in footnote 14, all other 68 examples, similar to Exhibit 102A, were omitted from this record for brevity. Battle Creek: 102B1-102B11; Grand Rapids: 102C1-102C10; Lansing: 102D1-102D12; Marshall: 102E1; Port Huron: 102F1-102F12; Saginaw 102G2-102G8;

^[19] Examples of these forms, as used by the Michigan National Bank, are contained in the Exhibit 101 series, R. 1217a-1235a.

charge fixed by law were obtained by appellant and savings and loan associations.^[20] In practice, both appellant bank and savings and loan associations granted F.H.A. and V.A. mortgages for about twenty years^[21] and they both granted the maximum ratio of loans to appraised value, as fixed by law.^[22]

The terms and conditions of Conventional mortgage loans were also comparable and competitive. In each community where appellant did business, both appellant and the savings and loan association or associations there located charged comparable interest rates,^[23] made mortgage loans in the same comparable ratio to the value of the property mortgages,^[24] made mortgage loans substantially comparable as to term of years,^[25] and received mortgages with comparable rights and liabilities (R. 326a).

Virtually all of appellant's residential mortgage loans as well as those of savings and loan associations involved the loaning of new money, rather than the giving of a mortgage to secure a pre-existing indebtedness (R. 613a, 614a, 619a, 636a, 640a, 647a) and were amortized on a monthly basis (R. 432a, 547a, 566a, 613a, 614a, 617a, 628a, 647a).

^[20]R. 221a, 432a, 488a, 547a, 564a, 599a, 609a, 618a, 638a, 646a, 1074a, 1152a.

^[21]R. 398a, 488a, 546a, 563a, 606a, 609a, 618a, 627a, 639a, 646a.

^[22]R. 567a, 606-7a, 609a, 618a, 639a.

^[23]R. 219a, 221a, 259a, 289a, 300a, 381a, 430a, 487a, 488a, 511a, 546-547a, 562a, 564a, 605a, 617a, 618a, 627a, 637a, 646a, 1053a, 1112a, 1142a, 1179a.

^[24]R. 566a, 567a, 606a, 607a, 609a, 617a, 618a, 627a, 639a, 646a, 1157a; Exhibit 106, R. 1255a; Exhibit 107, R. 1256a; Exhibit 108, R. 1257a.

^[25]R. 488a, 546a, 590a, 606a, 609a, 617a, 618a, 627a, 638a, 639a, 646a; Exhibits 106, R. 1255a; 107, R. 1256a; and 108, R. 1257a.

The officers of savings and loan associations and of appellant bank acknowledged that the bank and the associations were each others principal competitor for residential mortgage loan business.^[26]

The unqualified admission by the managing officers of the savings and loan associations was that appellant national bank was and is their principal competitor in the residential mortgage loan business in the localities where each operated. Similarly, the testimony of officers of appellant bank was that the savings and loan associations were its principal competitors for such mortgage loan business.^[27]

^[26]R. 108-109a, 203-204a, 259-260a, 291a, 384a, 439a, 479a, 515a, 576a, 601-602a, 611a, 619-620a, 629a, 648a.

^[27]Notwithstanding these unequivocal admissions by officers of the savings and loan associations as to competition (see footnote 26), counsel for appellee, State of Michigan, has intimated that such competition was not so substantial. Appellee's suggestion that only 6.5% of the associations' conventional loans were within both of the then statutory limitations on the banks' conventional loans in 1952, i.e. 60% or less of assessed value and 10 years or less (Exhibit 200, R. 1258a) does not truly or fairly reflect the overall competitive picture.

What appellee fails to acknowledge is that the average conventional loan of appellant bank was 60% of appraised value and for a 10 year term, whereas the average loan of the associations was for a somewhat lesser amount (54% to 59% of appraised value) though for a slightly longer term—11 years. (Exhibits 106, 107 and 108, R. 1255-7a). Moreover, appellant bank could (and sometimes did) permit payments on a lower monthly basis so long as at least 40% of the loan was amortized over 10 years, and at the expiration of 10 years renew the loan for another period not to exceed 10 years. The practical result of this procedure was for the bank to create a conventional loan for a term as great as 20 years (R. 573a, 590-592a; Eg., see Exhibit 101 A5, R. 1225a-9a).

We submit that this minor and unimportant difference did not affect the keen competition between these two financial institutions in this one type of mortgage loan—conventional mortgages. Much less does it affect the competition in the general home

(Continued on next page)

The Competition is Extensive and Substantial.

Nationally, all savings and loan associations in 1952 held \$18,336,000,000 (Exs. 10 and 14; R. 966a and 972a), or over 30.2% of the total mortgage debt in the United States of \$58,500,000,000 (Ex. 10, R. 965a). By the end of 1959 savings and loan associations held over \$49,727,000,000, or in excess of 38% of total national mortgage debt of \$131,144,000,000. (United Savings and Loan Fact Book, 1960; based upon Federal Home Loan Bank Board Reports.)

The extent and substantiality of the competition between national banks (including appellant) and savings and loan associations for the residential mortgage business is graphically illustrated by the chart on the following page, showing the holdings of each.

(Continued from page 15)

mortgage loan market, i.e. between all types of—F.H.A., V.A., and Conventional—mortgage loans. The testimony of the officers of the associations and of appellant bank clearly shows that they deemed the mortgage loan business of their respective institutions to be highly competitive.

Residential Mortgage Business

— 7 Cities Where Plaintiff Bank Operates —

1952

\$60,000,000



Michigan National Bank
(Exhibit 3)

(Including \$8,000,000 F.H.A. home modernization loans)

\$97,000,000



16 Savings & Loan Associations
(Exhibits listed below)*

— State of Michigan —

1952

\$304,000,000



All National Banks
(Exhibit 103)

\$433,000,000



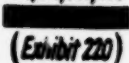
All Savings & Loan Associations
(Exhibit 6)

— United States —

1952

All National Banks

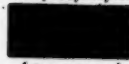
\$6,546,000,000



(Exhibit 220)

All Savings & Loan Associations

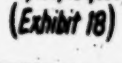
\$18,336,000,000



(Exhibit 14)

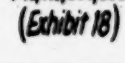
1957

\$9,436,494,000



(Exhibit 18)

\$40,119,000,000



(Exhibit 18)

★ (Exhibits: 36A, 36C, 36E, 36E, 36G, 36I, 36J, 45F, 57F, 61F, 73E, 77E, 81E, 87, 92.)

Because appellee and the court below relied upon early cases, decided at a time when national banks had no power to engage in the mortgage business and, therefore, legally could not and did not compete with savings and loan associations—which clearly is not the case today—the following undisputed facts showing the decided change in this situation are set forth.

The Keen Competition for Mortgage Business of the Present Day is quite different from the Time when National Banks had no Legal Power to Engage in this Business.

The area of competition with which we are here concerned, i.e., the residential mortgage market, is a relatively new one for national banks.

National banks could not make loans on real estate mortgages until the Act of December 23, 1913, c. 6 §24, 38 Stat. 251, 273, nor were they authorized to take savings deposits until the Act of February 25, 1927, 44 Stat. 1232. ^(27A) Under the 1913 Act, national banks were permitted to make mortgage loans on farm property only.

Congress since 1913 has continuously broadened the power of national banks to engage in the mortgage loan business, including loans on residences, until today the power of national banks to make residential mortgage loans is substantially the same as that of savings and loan associations.

An historical review of Section 24, Federal Reserve Act (12 U. S. C. 371), as amended (which prescribed the authority of national banks to make loans secured by real estate), reveals that prior to 1916, national banks were not authorized to loan money on the security of real estate, with the exception of certain farm land. By Act of September 7, 1916, (39 Stat. 754) the first grant of authority by Congress to

^(27A) The 1913 Act permitted national banks to take "time deposits". However, it was not until the 1927 Act that national banks were expressly authorized by Congress to take "savings deposits".

loan on residential real estate was made to national banks. This enabled national banks to loan money on the security of improved real estate to the extent of 50% of actual value for a term of no longer than one year. With the exception of the Act of February 25, 1927, (44 Stat. 1232) which extended the term of said mortgages to no longer than five years, no material change was made in the national banks' authority to loan on the security of residential mortgages until 1934.

In 1934 (Act of June 27, 1934, 48 Stat. 1263), national banks were permitted to make mortgage loans under Title II, National Housing Act (12 U.S.C. 1701 et seq.), commonly described as F.H.A. mortgages. By Act of August 23, 1935 (49 Stat. 706), amending Sec. 24 of the Federal Reserve Act, national banks were authorized to make conventional residential mortgage loans in the amount of 60% of the appraised value of the property for a term of ten years if 40% of the mortgage principal were amortized within ten years. By Comptroller General's decision of 1944, national banks became participants in the V.A. (or G.I.) home loan program. National banks were authorized to make Title I, F.H.A. home improvement loans by the 1950 Amendment to Section 24, Federal Reserve Act (64 Stat. 80). Accordingly, in 1952, national banks were authorized to make F.H.A. mortgage loans and home modernization loans, and V.A. mortgage loans identical to those made by savings and loan associations, and conventional mortgage loans comparable to those made by such associations.^[28]

As the undisputed facts hereinabove set forth show, the broadened authority granted by Congress to compete in the mortgage business was actively exercised by the banks in 1952 as an important part of their business. As previously

^[28] Since 1955—in addition to F.H.A. and V.A. mortgage loans—national banks, through amendments to Section 24, Federal Reserve Act, have been authorized to make conventional mortgage loans in the amount of two-thirds of the assessed value of the property for a term of twenty years, provided the principal is fully amortized within twenty years.

noted, *supra*, p. 17, the volume of competing residential mortgage business in Michigan and throughout the United States was most substantial. In 1952 residential mortgage loans of appellant bank amounted to 40% of its total loans and discounts, produced 26% of its income, and constituted 20% of its assets, and such business accounted for 30% of the total loans and discounts of all national banks in Michigan, *supra*, p. 10.

Since the Early Days there have been Substantial Changes in Character, Method, Manner and Scope of Operations of Savings and Loan Associations.

Not only do appellee and the court below rely upon early cases when national banks could not and did not compete, but at such time savings and loan associations were substantially different in character and in their method, manner and scope of operation from the large, commercially operated, profit-making, savings and loan associations of the present day.

Relying upon the early cases, appellee contended and the court below held that the capital invested in the modern associations could be "partially exempted" (preferred taxwise*) by the State of Michigan without violating R. S. 5219.

Appellant contends that R. S. 5219 is violated whenever moneyed capital, employed in a business for profit in substantial competition with a substantial phase of the business of national banks, is taxed at a lower rate than shares of national banks. Moreover, we submit that the argument of appellee and the conclusion of the lower court that a state may "partially exempt" (prefer taxwise) moneyed capital invested in shares of savings and loan associations for "just cause" without violating R. S. 5219 cannot be sustained in the face of the undisputed facts in this case.

*None of these shares are exempt from tax—they are merely taxed at a lower or preferred rate. Appellant submits that a difference in rate is a discrimination.

In the early days savings and loan associations were small organizations of "poor people," who banded together in small local or neighborhood groups, investing part of their weekly wages to provide funds to enable one another to build small homes. These organizations were quasi-charitable in nature, were operated mutually for the benefit of their closely knit group of members, only loaned to their members and not to the public, and were not operated for a profit in the commercial sense.

There has been a basic change in the character of these organizations and a significant difference in the method, manner and scope of their operations. Savings and loan associations today are big, powerful, financial institutions. They no longer obtain funds from small local or neighborhood groups of "poor people," but extensively advertise for and solicit investments in their shares from the public at large, to obtain the largest possible public participation by investors from all economic and income groups, rich, middle class, and wage earners, corporations, partnerships, trusts, pension funds and others. They no longer are mutual in character and operation. These investors invest their money in a corporation engaged primarily in the business of making residential mortgage loans to non-investors (the public at large) at the highest rates competition will permit, with little concern for the needs and requirements of borrowers of such mortgage funds. Such investor shareholders seek high returns and operate these associations in a commercial sense for the highest profit obtainable, consistent with reasonable safety.

In loaning funds secured by residential mortgages, these associations also publicly advertise, soliciting loans from the general public in every economic strata—not merely from their investors. In fact, mortgage borrowers from present day associations are not members when their business is sought (with few exceptions), do not become members until

the loan is made, and cease being members when the loan is paid. Nor do such borrowing members participate in profits or losses.

Although the shares of Michigan savings and loan associations were originally exempt by statute from State taxation,^[29] in 1939 and thereafter they were (and are) subjected to State taxation.^[30] Under Act 9 of 1953 the rate on national bank shares was greatly increased, whereas the tax rate on shares in savings and loan associations was not increased. The present substantial difference in rate (\$5.50 per \$1000 vs. \$.40 (40 cents) per \$1000), appellee and the court below characterized as "partial exemption." None of these shares are exempt from such tax—they are merely taxed at a lower or preferred rate.

Whether or not Michigan savings and loan associations, themselves, were ever subject to state franchise taxes prior to 1921, does not appear. However, it is clear that since 1921 state associations have been subject to such franchise taxes.^[31] Neither Federal savings and loan associations nor national banks were subject to such state franchise tax, because both are granted the privilege of doing business by the Federal Government, and not by the state.

In 1951, because of the basic change in the character and manner and scope of their operations, the Congress of the United States concluded that there no longer was any valid basis to exempt savings and loan associations from Federal

^[29]Act 50, Public Acts of Michigan, 1887, Section 17.

^[30]Intangibles tax on shares of savings and loan associations: Act 301, Public Acts of Michigan, 1939, Section 2; amended by Act 233, Public Acts 1941; Act 165, Public Acts 1945; and Act 9, Public Acts 1953, Section 2a.

^[31]Act 85, Public Acts 1921 of Michigan; Act 233, Public Acts 1923; Act 33, Public Acts 1927; Act 140, Public Acts 1927; Act 154, Public Acts 1945; Act 183, Public Acts 1952.

corporate income taxes, recognizing (Senate Finance Committee Report, 82nd Congress, 1st Session, S. Rept. 781) :

"In the early days of these institutions, the transactions of the associations were confined to members, and no one could participate in the benefits they afforded without becoming a shareholder. Individuals became investing members of these organizations in the expectation of ultimately becoming borrowing members as well. Membership implied not only regular payments to the association for a considerable period of time, but also risk of losses. Members could not cancel their memberships or withdraw their shares before maturity without incurring heavy penalties. The fact that the members were both the borrowers and the lenders was the essence of the 'mutuality' of these organizations.

"Although many of the old forms have been preserved to the present day, few of the associations have retained the substance of their earlier mutuality . . . borrowing members find dealing with a savings and loan association only technically different from dealing with other mortgage lending institutions in which the lending group is distinct from the borrowing group. . . .

" . . . since savings and loan associations are no longer self-contained cooperative institutions as they were when originally organized there is relatively little difference between their operations and those of other financial institutions which accept deposits and make real-estate loans."

The undisputed facts (and record references) showing

(a) basic and significant changes in the character, method, manner and scope of operation of savings and loan associations since their inception in Michigan in 1887 and nationally, and

(b) the tremendous growth, size and power of present-day associations^[32]

are set forth in connection with our argument that under R. S. 5219 the State of Michigan is without power to "partially exempt" or prefer taxwise moneyed capital invested in savings and loan associations and there is no "just cause" for it so to do. See *infra*, p. 65 *et seq.*

^[32] Savings and loan associations "are making home loans [nationally] . . . totalling more than \$14 billion dollars annually . . . more than all other financial institutions combined," according to a two page advertisement of The Savings and Loan Foundation, appearing in U. S. News & World Report, October 17, 1960, pp. 32-33.

SUMMARY OF ARGUMENT

The compelling object and purpose of this action is to assure equality of taxation in the State of Michigan to national banks and their shareholders with their principal competitors in the residential mortgage loan business (which business constitutes a substantial phase of the business of national banks).

Since 1952 the State of Michigan has subjected shares of national banks to a tax at a rate 8 to 13 times greater than that imposed upon shares of savings and loan associations (including that imposed upon the associations themselves)—clearly discriminatory and contrary to R.S. 5219.

Modern savings and loan associations, employing huge aggregations of capital (presently in excess of \$1,600,000,000 in Michigan; \$55,000,000,000 in the United States), are formidable and dominating competitors of national banks in the mortgage lending phase of the banks' business. Such mortgage business of national banks (and appellant bank) is substantial and is an "important and sizable" part of their business (40% of all loans and discounts). Such mortgage business produces a large amount of the banks' income (in excess of 26%) and is vital to the continued strength and vitality of national banks.

Appellant national bank does not here seek to avoid taxation or to obtain tax immunity. It merely seeks not to be placed at a distinct competitive disadvantage because of tax discrimination forbidden by R.S. 5219—which by Congressional mandate directs that the State in taxing shares of national banks shall not tax them "... at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks ...".

R. S. 5219, since its original enactment in 1868, has been the sole grant of power to the states to tax national bank shares. A state may tax only in accordance with its conditions. *First National Bank of Guthrie Center v. Anderson*, 269 U.S., 341, 347; 70 L.Ed. 295; *Des Moines National Bank v. Fairweather*, 263 U.S., 103, 106; 68 L.Ed. 191. Its purpose through the years has been to protect, as agencies of the United States, national banks and their shareholders from the very sort of discrimination which has been practiced in this case.^[a]

Under the following principles announced by this Court, R. S. 5219 has been violated in the case at bar:

1. The rate of tax on national bank shares is substantially greater than that assessed against savings and loan associations and their shareholders.

2. The money invested in shares of such associations represents "other moneyed capital", within the terms of R. S. 5219. This capital employed in carrying the association's business is money, which is invested and reinvested in the mortgage business for profit and is clearly within the definition of "moneyed capital" under R. S. 5219. *Mercantile Bank v. New York*, 121 U.S. 138; 157; 30 L.Ed. 895.

[a]The discrimination here resulted from placing national bank shares in a special, heavily taxed category, while savings and loan shares and other intangibles were left to be taxed at the old and much lower rate. Appellant's tax (alone) on its shares thereby were increased in excess of one-half million dollars during the past six years. More importantly, the rate of tax imposed on bank shares has been 8 to 13 times the rate assessed against savings and loan associations and their shareholders. Further intensifying this discrimination is a statutory undervaluation of the associations' shares in relation to bank shares.

Amendment to Michigan Intangible Tax Law, by Act 9 of the Public Acts of 1953, relating applicable to 1952 and thereafter.

3. The share capital of such associations in Michigan (presently in excess of \$1,600,000,000) is substantial when compared to the capitalization of all national banks in Michigan. *First National Bank of Hartford v. City of Hartford*, 273 U.S. 548, 558; 71 L. Ed. 767.

4. The capital of such associations is employed in the same sort of transactions (residential mortgage loans) as those in which national banks engage and in the same localities in which they do business. *Hartford, supra*, p. 558.

5. There is keen and substantial competition between national banks and savings and loan associations in Michigan (and throughout the United States) for the residential mortgage business *supra*, pp. 9-17. This mortgage business constitutes a vital and substantial phase of the business of the banks. *Hartford, supra*; *Minnesota v. First National Bank*, 273 U.S. 561, 567.

II.

The Michigan Supreme Court made three basic errors in its decision.

1.

The Michigan Court erred in holding that savings and loan associations as a matter of law cannot be in competition with the business of national banks because they are "different in character, purpose and organization from national banks," operate "in a narrow, restricted field," and are not permitted to take deposits.

This proposition is in direct conflict with the decisions of this Court. This Court has held that "competition . . . arises **not from the character of the business** of those who compete but from the **manner of employment of the capital** at their command." *Hartford, supra*, p. 557. To hold otherwise would be to restrict R. S. 5219 to state banking associations, since

they are the only institutions permitted to take deposits and are the only institutions whose "character, purpose and organizations" are similar to a national bank. Such position has been consistently rejected by Congress and this Court, *Merchants National Bank of Richmond v. City of Richmond*, 256 U.S. 635; 65 L. Ed. 1135.

The lower court's reliance upon the so-called "narrow, restricted field" in which savings and loan associations operate as compared with banks is also clearly erroneous. This Court has held that competition under R. S. 5219 exists, where the other "moneyed capital" (of savings and loan associations), substantial in amount, is employed "in some but not all phases of the business of national banks." *Hartford, supra*, p. 557; *Minnesota v. First National Bank*, 273 U.S. 561, 567.

Here it is undisputed that the residential mortgage loan business is a substantial and important part of the business of appellant and other national banks in Michigan. Such mortgage loans constitute 40% of all of appellant's loans and discounts; 30% of all national banks' loans and discounts; and more than 26% of appellant's total income is derived therefrom.

Clearly, R. S. 5219 is applicable where, as here, there is substantial competition with a substantial phase of the business of national banks.

2.

The Michigan Court erred in substituting a test of discrimination under R. S. 5219 expressly rejected by this Court—in effect substituting a different tax, not permitted a state in taxing national banks or their shares. Instead of a tax on bank shares (assets less liabilities), which the Michigan statute (Act 9) imposed, the Michigan court substituted a tax on total or gross assets (without deducting liabilities)—

and by this impermissible variance concluded that there is substantial tax equivalence. This method of comparison was expressly rejected by this Court (in *Minnesota*, supra, 273 U.S. at 564, *Des Moines v. Fairweather*, 263 U.S. 103) as ignoring R. S. 5219, which authorizes a tax on shares, not on gross assets without deducting liabilities.

Appellee asserts still another method of comparison, not adopted by the Michigan court, which would exclude as "other moneyed capital" the paid-in capital of the associations (presently \$1,600,000,000) on the theory that shareholders are depositors. This proposition is erroneous. Investors in these associations, as a matter of law and in substance are shareholders, and are not depositors or creditors, *Michigan Savings and Loan League v. Municipal Finance Commission of Michigan*, 347 Mich. 311; 319; 70 N. W. 2d 590; and, even if they were depositors, such as in mutual savings banks, their interest in the association would be nonetheless "other moneyed capital," which must be taxed at no lesser or favored rate than shares of national banks. *Mercantile*, supra, 121, U.S., at p. 157.

3.

Lastly, the Michigan court, relying on early cases from a different era, erroneously concluded that the state had the right to partially exempt (prefer tax wise) these associations and their shareholders without violating the prohibitions of R. S. 5219. This conclusion is based upon two errors.

First, since the time of these early cases there has been a significant broadening of the powers of national banks, which made it possible for them to make mortgage loans on residential properties on the same basis as savings and loan associations. Today there is sharp and substantial competition between the two institutions—which formerly was non-existent.

It necessarily follows that cases involving the making by state institutions or others of mortgage loans or of accepting and investing savings deposits at a time when national banks did not have authority or were not exercising authority to do either are inapplicable to present day conditions.

Secondly, the modern savings and loan associations—unlike those of the early days—are no longer small, neighborhood organizations of “poor people,” banded together to husband their weekly wages to provide funds to enable one another to build small homes. They are no longer mutual nor are they non-commercial, operated on a quasi-charitable basis as in the early days.

Today, these associations not only (a) are dominant competitors of national banks in the residential mortgage lending business, but (b) are large, powerful, rapidly growing financial institutions, operating commercially for a profit, seeking their investment share capital from the general public of all economic and income classes, not only of wage earners, but mostly from business men, professional people, corporations, partnerships, trusts, and pension funds. They no longer are mutual in operation. The interest of the investors is diametrically opposed to that of the borrowers.

Profit is the prime object and motive of the investors and of the associations.^[b]

Favored taxwise, these associations have enjoyed a phenomenal growth and today advertise that they make “more residential mortgage loans than all other financial institu-

[b]The character of Michigan savings and loan associations having changed from 1887 (when they were exempt from taxation) (Act 50 P. A. of 1887; M.S.A. 23.558), Michigan now taxes savings and loan associations and their shares but at a substantially lower rate than that imposed upon the shares of national banks.

tions combined." There clearly is no "just reason" why such associations or their shareholders should be entitled to tax preference as against national banks or their shares. R. S. 5219 expressly prohibits such tax discrimination against national banks and their shares.

If such tax discrimination by states against national banks and their shareholders be countenanced and continued, the competitive disadvantage to national banks is implicit. The results will be serious and far-reaching.

ARGUMENT

I.

**UNDER THE CONTROLLING DECISIONS OF
THIS COURT, ACT 9 IS INVALID AND IN CON-
FLICT WITH R. S. 5219.**

**States are prohibited from taxing national banks or their
shares except as Congress permits.**

Absent R. S. 5219, a state is without power to tax national bank shares. "National banks are not merely private moneyed institutions but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property and their shares cannot be taxed under state authority except as Congress consents and then only in conformity with the restrictions attached to its consent." *First National Bank of Guthrie Center v. Anderson*, 269 U.S. 341, 347; 70 L. Ed. 295; *Des Moines National Bank v. Fairweather*, 263 U.S. 103, 106; 68 L. Ed. 191; and cases cited.

**R. S. 5219 prohibits a State from imposing discrimina-
tory taxes against national banks or their shares.**

As relates to a state "tax on shares" of national banks, which is here involved, Congress by R. S. 5219, Sec. 1 (b) has provided that the tax

"shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks."^[33]

These limitations, as defined by this Court, are that the state tax on national bank shares—

^[33] A state tax "on shares" is "in lieu of" the other three methods of state taxation on national banks or their shares permitted under the statute. See R. S. 5219, Sec. 1 (a).

1. "shall not be at a greater rate than is assessed upon other moneyed capital";

2. "coming into competition with [a substantial phase of] the business of national banks"; and

3. such competition is substantial when compared to the capitalization of national banks in the state.

The State of Michigan clearly failed to comply with these requirements in taxing national bank shares under Act 9.

1.

Shares in Savings and Loan Associations are "Other Moneyed Capital."

The money invested for profit in shares of savings and loan associations, and employed by such associations, for profit, in making loans secured by residential and other real estate mortgages is clearly "other moneyed capital," within the meaning of R. S. 5219. This was conceded by appellee and recognized by the Michigan Supreme Court.

"The terms of the act of Congress . . . include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money . . . reduced again to money and reinvested."

Mercantile Bank v. New York, 121 U.S. 138, 157; 30 L. Ed. 895.

National Bank Shares are Taxed at a "Greater Rate" than Other Moneyed Capital.

Act 9 placed bank shares in "a special and more heavily taxed category" (358 Mich. 611, 614) taxing such shares at a "greater rate," 8 or more times the rate imposed on savings and loan associations and their shares. See *infra*, pp. 47-49.

2.

Moneyed Capital Employed by Savings and Loan Associations "Coming into competition with [a substantial phase of] the business of national banks."

The record in this case proves beyond question the fact of actual and direct competition between national banks and savings and loan associations in Michigan. It shows that both institutions were actively and substantially engaged during the tax year in question, and to date, in seeking and securing in the same localities throughout the State investments of the same class, i.e., residential mortgage loans, and that this business, insofar as national banks and appellant were and are concerned, represented a substantial phase of their business. See Statement of Case, *supra*, pp. 9-17.

3.

The competing moneyed capital of savings and loan associations is "substantial when compared with the capitalization of national banks."

This third element of the test under R. S. 5219 has been held by this Court to be implicit in the statute.

"§5219 is violated wherever capital, substantial in amount **when compared with the capitalization of national banks**, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business." *First National Bank of Hartford v. City of Hartford*, 273 U.S. 548, 558; 71 L. Ed. 767.

It is undisputed that other moneyed capital invested in all savings and loan associations in Michigan in 1952 (in excess of \$468,000,000) (Ex. 221 R. 1284a) was approximately three times the total capitalization of all national banks in Michigan (\$166,724,000) (Ex. 103 R. 1251a), and such other moneyed capital in associations located in the cities where appellant operated (\$134,438,000) (Ex. 209 R. 1273a) was

approximately ten times the capitalization of appellant bank (\$13,038,000) (Ex. 3 R. 932a).

Nationally, in 1952, the moneyed capital represented by shares in savings and loan associations amounted to \$20,853,000,000 (Ex. 224 R. 1288a) as compared with \$7,059,000,000 (Ex. 224), the capitalization of all national banks.

That the competition between savings and loan associations and national banks for residential mortgage loan business is "substantial" cannot be denied and does not need any showing as to its relation to the "total financial business" in Michigan during the tax year in question, as appellee suggested in its Motion to Dismiss or Affirm, page 9. To require a national bank to establish the total amount of **all other moneyed capital** in a state would not only place an impossible burden of proof on national banks but would permit a clear discrimination in favor of a substantial amount of moneyed capital in direct competition with the national banking business. Where a substantial phase of the banking business is discriminated against by favoring moneyed capital similarly invested which is also substantial, there is no necessity for inquiring or proving how other moneyed capital not so invested in the state is taxed. To do so would in no way alter the fact that the bank has been placed at a definite disadvantage as regards a substantial part of its business. For this reason, this Court held that the pivotal consideration is whether the **capital employed in competition** (with a substantial phase of the business of national banks) is "substantial in amount when compared with the capitalization of national banks," *Hartford, supra*.^[34]

^[34]Not only is there abundant proof of the substantiality and extent of competition for residential mortgage business between savings and loan associations and national banks in Michigan, *supra*, pp. 9-17, but the same was introduced at the trial (over the

Under the controlling decisions of this court, Act 9 is invalid and in conflict with R. S. 5219.

Where, as here, substantial amounts of moneyed capital are invested in and employed by savings and loan associations in direct competition with a substantial phase of the business of appellant and other national banks, to-wit: the business of making loans on residences and other real estate in the same localities, the case, we submit, is wholly concluded by the following decisions of this Court, next discussed.

First National Bank v. Hartford, 273 U.S. 548; 71 L. ed. 767, went into so many features of the matter both of law and of fact that a rather lengthy discussion of the case seems imperative. The suit was to recover the tax on a national bank's shares for the year 1921. This Court found that it was apparent that the ad valorem tax imposed upon national bank shares was at a greater rate than the income tax imposed upon credits and intangibles, but the Court further held:

"... it is not sufficient to show this discrimination alone."
(552)

The Court carefully pointed out that:

(Continued from page 31)

objection of appellee) a voluminous abstract of every one of 24,126 real estate mortgages recorded in 1952 in the seven counties in which appellant bank operates (which took two men three full months to prepare). From this abstract, summaries were made and introduced into evidence, showing the number and dollar volume of all mortgages made in each of said counties in 1952 by (a) savings and loan associations, (b) appellant bank, (c) other banks, (d) insurance companies, (e) other corporations, (f) individuals, and (g) credit unions, together with a combined recap for all seven counties (Ex. 65A-F; R. 1021-4a). The amount and proportion of such loans made by the savings and loan associations to the total is substantial.

As noted before, their share of the residential mortgage market has increased significantly and today The Savings and Loan Foundation advertises nationally that such associations make residential mortgage loans "more than all other financial institutions combined." See footnote 32, *supra*, p. 24.

"The validity of the tax complained of depends upon whether or not the moneyed capital in the state thus favored is employed in such a manner as to bring it into substantial competition with the business of national banks." (552)

This was the question discussed and decided in the case. The Court concluded in *Hartford* that:

"Competition may exist between other moneyed capital . . . within the purpose of §5219, even though the competition be with **some but not all phases** of the business of national banks. Section 5219 is not directed merely at discriminatory taxation which favors a competing banking business. (557)

"... Our conclusion is that §5219 is violated **wherever** capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business." (558)

The nature of the evidence considered by this Court in reaching this conclusion was as follows:

"The evidence shows that plaintiff in the course of its business receives deposits, loans money, has a savings department, deals in exchange, buys and sells notes, government and other bonds, discounts commercial paper and acquires real estate mortgages by loan and purchase.

"There are **real estate firms** engaged in lending money to individuals in the vicinity of plaintiff's banking house, the amount thus loaned amounting annually from \$250,000 to \$300,000. * * * And similar conditions obtain throughout the state. There are various individuals, co-partnerships and corporations in the vicinity engaged in the business of acquiring and selling notes, bonds, mortgages and securities. Substantial capital is employed in their business." (553).

"* * * it affirmatively appears from the evidence, that there are individuals, firms and corporations in Wisconsin, not required by its laws to be incorporated as banks, engaged in the business of loaning money on the security of notes, bonds, and mortgages, and buying and selling securities, all involving investment and reinvestment by them and their customers. Through the activities of these business concerns, large investments are made and remade in such securities. Large amounts of capital are thus employed in some of the ordinary banking activities although these individuals and firms do not receive deposits..." (555)

The Wisconsin Court there, like the Michigan Court here, denied recovery construing the decisions of this Court "as requiring equality in taxation only of moneyed capital invested in businesses substantially identical with the business carried on by national banks." (555)

This Court, rejecting that construction of R. S. 5219, said:

"Under this [the Wisconsin Court's] view, if logically pursued, capital invested in businesses engaged in **some but not all of the activities of national banks** * * * could not be considered in determining the question of competition..." (556):

"The restriction applies as well where the competition exists only with respect to particular features of the **business of national banks** or where moneyed capital is employed, substantially as in the loan and investment features of banking, in making investments by way of loan, discount or otherwise, in notes, bonds or other securities, with a view to sale or repayment and reinvestment..." (556).

"Here large amounts of capital are shown to be invested in businesses carried on throughout the state which are of the same character as some though not all of the business carried on by national banks. In two fields at least, loans and sales of credits, capital thus employed is shown to be in substantial competition with that of national banks..." (558-9).

"It is enough as stated if both engage in seeking and securing in the same locality capital investments of the class now under consideration which are **substantial in amount** . . ." (559).

"plaintiff is shown to have investments in real estate mortgages and to be engaged in selling them . . . To that extent the business of acquiring and selling such mortgages and evidences of debt, carried on by numerous individuals, firms, and corporations in Wisconsin, comes into competition with this incidental business of national banks" (560).

Most pertinent are statements in *Hartford* at p. 557, lines 25-34; and p. 558, lines 2-21, quoted *infra*, pp. 39-40, holding that "**manner of employment**" of other moneyed capital and "**not . . . character of the business**" determine the question of competition with national banks under R. S. 5219.

To the same effect, and decided on the same day as *Hartford*, is *Minnesota v. First National Bank*, 273 U.S. 561; 71 L. Ed. 774, in which this Court said:

" . . . the competition guarded against by §5219 . . . may arise from the **employment of capital** invested by institutions or individuals **in particular operations or investments** like those of national banks." (567).

First National Bank v. Anderson, 269 U.S. 341; 70 L. Ed. 295, reversed a judgment of the Iowa Supreme Court, which had dismissed the bank's petition. The case stated in the petition is summarized at page 351:

"Some of these [allegations] are directly to the effect that the tax on the shares was computed at the rate of one hundred and forty-three and five-tenths mills on the dollar, while that on notes, mortgages and other evidences of indebtedness, 'such as normally enter into the business of banking' and representing moneyed capital of individual citizens 'engaged in competition' with the bank, was computed at five mills on the dollar" (351).

The amount taxable at five mills was alleged to be approximately \$5,000,000. This Court, holding that the state tax vio-

lated R. S. 5219, reviewed the earlier decisions and summarized the same in four numbered paragraphs, pages 347 and 348, holding that:

"... every clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks is a violation of both the letter and spirit of the restriction . . ." (348).

The addition to R. S. §5219 by the Act of 1923 of the words "coming into competition with the business of national banks," etc. were discussed and it was said:

"* * * the reenactment did no more than to put into express words that which, according to repeated decisions of this Court, was implied before" (350).

In *Merchant's Nat'l Bank v. Richmond*, 256 U.S. 635; 65 L. Ed. 1135, the City of Richmond (Va.) assessed national bank shares for the year 1915 at \$8,000,000, state banks and trust companies at \$6,000,000 and "bonds, notes and other evidences of indebtedness" at \$6,250,000. The latter were taxed at a lower rate than the bank shares. The Virginia Court held that, there being no difference in the tax rate on state and national bank shares, the lower rate on the other class was immaterial. This court said:

"* * * It is to be inferred that a substantial part of this aggregate was in the hands of individual taxpayers; the precise amount does not appear. It also was shown by evidence without dispute that moneyed capital in the hands of individuals invested in bonds, notes, and other evidences of indebtedness comes into competition with the national banks in the loan market." (638).

The Court then reviewed and restated the rulings as to what is meant by moneyed capital, page 639, second paragraph, and 641 beginning with line 7. The essence of the decision is:

"... while the words 'moneyed capital in the hands of individual citizens' do not include shares of stock in corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into direct competition with those banks. They include not only moneys invested in private banking, properly so called, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter into the business of banking." (639)

The Richmond tax was held by this court to be in violation of R. S. 5219 and the judgment of the Virginia Supreme Court was reversed.

To the same effect see *Public National Bank of New York v. Keating, et al.* (CCA 2, 1931), 47 F. 2d 561; affirmed Per Curiam, *Keating v. Public National Bank*, 284 U.S. 587; 76 L. Ed. 507. The rules of *Hartford* and *Minnesota* were well summarized—insofar as is here applicable—by the Second Circuit Court of Appeals, 47 F. 2d 561, 564.

II

THE DECISION OF THE MICHIGAN SUPREME COURT IS IN DIRECT CONFLICT WITH THE CONTROLLING DECISIONS OF THIS COURT AND WOULD NULLIFY R. S. 5219 AND MAKE IT INOPERATIVE.

The Michigan Supreme Court made three basic errors in its decision.

1.

The Michigan Supreme Court erred in holding that as a matter of law savings and loan associations cannot be in competition with the business of national banks because they are "different in character, purpose and organization from national banks" and operate "in a narrow, restricted field."

The Michigan Supreme Court quoted (358 Mich. 611, 618) and considered:

"Defendants summarize their position as follows:

"In the last analysis, savings and loan associations cannot be in "substantial competition with the business of national banks" because they cannot and do not engage sufficiently in the activities characteristically carried on by the national banks. Stated another way, if they are not comparable institutions in substance, how can they be in substantial competition?"

Notwithstanding the proven fact of competition by savings and loan associations with a substantial phase of the business of appellant and other national banks in the state, the Michigan Court concluded (639) that:

"Michigan building and loan associations operated in a narrow, restricted field, are markedly different in character, purpose and organization from national banks, and are not in 'substantial competition' with national banks."

The Michigan Court's conclusion followed the above quoted summary of appellees' position based on their contention that **banks** receive deposits and engage in all activities of the banking business, of which the loan of moneys on residential mortgages is but one phase [even though over 40% of appellant's total loans]; whereas, **savings and loan associations** are not permitted to "accept deposits" or to "do a banking business," and their business is limited "solely in the narrow activity of making first mortgage loans secured by residential properties..." (618).

The same argument was made and followed by the Wisconsin Supreme Court in *Hartford*, but was explicitly rejected by this Court (273 U.S. 548; 71 L. Ed. 767). This Court recognized that:

"Large amounts of capital are thus employed in some of the ordinary banking activities although these individuals and firms **do not receive deposits.**" (555),

but, nevertheless, held:

"... this Court has recently had occasion, in reviewing the earlier decisions dealing with this subject, to point out that the requirement of approximate equality in taxation is **not limited to** investment of moneyed capital in shares of **state banks** or to competing capital employed in **private banking**. The restriction applies as well where the competition exists only with respect to particular features of the business of **national banks**..." (556)

"Competition may exist between other moneyed capital and capital invested in national banks, serious in character and therefore well within the purpose of §5219, even though the competition be with some but not all

phases of the business of national banks . . . Competition in the sense intended arises **not from the character of the business** of those who compete, **but from the manner of the employment of the capital** at their command . . . (557)

"To so, restrict the meaning and application of R. S. 5219 would defeat its purpose. . . . With the **great increase in investments by individuals and the growth of concerns engaged in particular phases of banking** shown by the evidence in this case and in *Minnesota v. First National Bank of St. Paul* . . . [273 U.S. 561, 567], discrimination with respect to capital thus used could readily be carried to a point where the business of national banks would be seriously curtailed. Our conclusion is that §5219 is violated wherever capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business." (558).

To the contrary, the Michigan Supreme Court erroneously concluded that because the savings and loan associations were not banks of deposit, R. S. 5219 was not violated, saying (358 Mich. 611, 635) :

"The fundamental difference between a bank making loans from deposits and loans made otherwise, was recognized in *First National Bank of Shreveport v. Louisiana Tax Commission* (1933), 289 U.S. 60; 77 L. Ed. 1030."

In *Shreveport* this "difference" was relied upon solely to show an "ample basis for classification" to meet one challenge of the bank, that the equal protection clause of the Fourteenth Amendment had been violated (64). This difference in character or source of the moneyed capital, however, was not considered by this Court as a defense to the other challenge of the bank, that R. S. 5219 had been violated. As

regards R. S. 5219, this Court held that "fact" of competition was the controlling test. The record in *Shreveport* clearly showed that in that case "there was no competition with the national banks on the part of any concern lending money on mortgages of real estate; because national banks will **never handle such loans**" (66) and, therefore, R. S. 5219 was not violated; whereas the record in the case at bar clearly proves competition and violation of R. S. 5219.

In effect, the Michigan Supreme Court's reasoning is nothing more than the old argument that R. S. 5219 should apply solely to state banks, the only institutions which are substantially identical to national banks and are similar in "character, purpose, and organization" to national banks. To so confine R. S. 5219 would be contrary to *Merchant's National Bank v. Richmond*, *supra*, and also to the 1923 amendment to R. S. 5219 as it has been consistently construed by *Hartford* and other post-1923 cases. See *supra*, p. 36. It would, in fact, restrict R. S. 5219 in a manner which Congress has consistently refused to do, despite repeated proposals.^[35]

Notwithstanding, appellee still contends, and the lower court held, that as a matter of law there cannot be "substantial competition" because savings and loan associations oper-

^[35]Proposals to limit state taxes on national bank shares to that imposed on shares of state banks—thus permitting other competing moneyed capital to be taxed at lower rates by the states—have been rejected by Congress since 1923. Hearings before Senate Banking and Currency Committee, on S. 1573, 70th Cong., 1st sess. (1928), pp. 2, 476. Hearings on H. R. 8727 before the House Committee on Banking and Currency, 70th Cong., 1st sess., 1928, pp. 1, 1124 (after *Hartford*); S. 3009, 1934 Congressional Record, 73rd Cong., 1st sess., p. 4041; H.R. 9045, 1934, *Ibid.*, pp. 6375, 10294 (after *Shreveport*).

ate in a "narrow and restricted field" and do not perform the "major or characteristic functions" of national banks.

Relying upon its expert witness, Professor Woodworth, appellee asserts that the "major or characteristic functions" of national banks are their so-called "monetary functions"^[36]—which can only be performed by a bank—and concludes that because savings and loan associations do not perform these functions they cannot be in "substantial competition" as a matter of law.

Professor Woodworth, upon cross-examination, admitted that in the banks' so-called "secondary functions,"—the making of loans and discounts, including the making of residential mortgage loans—national banks and savings and loan associations do compete substantially (R. 869a, 875a); that as to national banks in Michigan the residential mortgage business was a "sizable part of their total loans" (R. 878a; 905a); and that, the interest derived therefrom was an "important and sizable" part of total income (26% for appellant bank) so far as banking operations were concerned (R. 881a; 905a).

Professor Woodworth admitted that the primary or monetary functions of a bank (see footnote 36) had reference to demand deposits which were "associated more with non-earning assets" in the form of primary reserve, cash, balance due from other banks, reserve to the Federal Reserve, items in process of collection (R. 881a). Furthermore, demand deposits "subject to check on demand . . . have to be kept in fairly liquid form" (R. 882a). We submit that a national bank earns most of its income by the making of loans and

[36] The monetary functions, according to appellee's witness, Professor Woodworth, are: (a) providing a safe and uniform currency; (b) serving as a depository for the federal government and assisting the treasury in its fiscal operations, and (c) providing a safe check book money for business and the general public (R. 823-24a).

discounts, including long term residential mortgage loans.^[37] Clearly, therefore, unless R. S. 5219 protects national banks in the performance of their money-making "secondary functions"—loans and discounts—they would be unable to perform their primary or any other functions.

The Comptroller of Currency, who is charged with the supervision of all of the thousands of national banks throughout the United States, does not subscribe to the theory regarding competition suggested by Professor Woodworth on behalf of appellee and followed by the lower court. The Comptroller recently testified before Congress that:

"... banks are finding themselves more and more in competition with ... Federal and State chartered savings and loan associations ..."

^[37]Ex. 3 (R. 931a), the Statement of Condition of appellant bank at 12/31/52, shows that Loans and Discounts (item 6) were \$146,411,387, or almost 50% of the bank's total assets; the other large items of assets being cash (item 1), \$46,045,857, which earned no income, and Government securities (item 2), \$107,803,407, which earned a much lower interest rate than loans.

Interest from loans accounted for \$8,800,000 income, or about 39% of the total income of the bank; whereas income from the so-called monetary functions produced only 20% of bank's total income. See Ex. 205 (R. 1266a), appellant bank's operating statement for 1952.

For an analysis of appellant bank's Loans and Discounts at 12/31/52 see R. 934a, showing that its residential mortgage loans (item 6(b)(1)(2)(3)) and home modernization loans (item 7(c)), aggregating approximately \$60,000,000, amount to over 40% of its total loans. It is to be noted that commercial and industrial loans (item 1), \$22,318,916, account for only about 15% of the total loans. The extent of the loan activity of the bank, consolidated (R. 948) and by its seven offices (R. 950a-958a) may be of interest.

Banks operating in smaller communities, such as appellant—unlike the large Detroit and other metropolitan banks—are far more dependent upon residential mortgage loan business than upon commercial loans.

"Federal and State-chartered savings and loan associations are zealous and highly effective competitors for the funds of savers and for real estate mortgage loans . . ."

(See *infra*, p. 83)

Hartford and *Minnesota* have clearly rejected contentions such as those made by appellee. These cases hold that a state may not exempt or prefer other moneyed capital merely because it is engaged in some, but not all, of a bank's activities, or because it has a different character and purpose from national banks. In the case at bar, the Michigan court erred in holding that the state did not violate R.S. 5219 by preferring other moneyed capital invested in savings and loan associations because they are "different in character, purpose and organization from national banks" and that they operated in a so-called "narrow, restricted field" (residential mortgage loans), when the undisputed facts are that:

1. Residential mortgage loans amounted to 40% of appellant bank's total loans, 26% of its income^[38] and 20% of its total assets.
2. All national banks in Michigan held \$301,462,000 of residential loans amounting to 30% of their total loans and discounts.
3. The moneyed capital employed by such associations is three times the capitalization of all national banks in Michigan.

^[38]If income from home modernization loans were included with that derived from residential mortgage loans the percentage would exceed 32%, since the 26% figure does not include income from \$8,317,000 home modernization loans (R. 539a; Ex. 205, R. 1266) and footnote 37, *supra*.

Savings and loan associations also made competing home modernization loans (R. 987a; 988a; 1008a).

**The Home Owners Loan Act of 1933 does not Repeal
R. S. 5219 by Implication.**

R. S. 5219 was enacted to prevent states from discriminating against national bank shares in favor of other moneyed capital employed in substantial competition with the business of national banks—regardless of its “character, purpose and organization.” *Hartford, supra*. Congress provided for no exemptions, exclusions or exceptions of any other competing moneyed capital in R. S. 5219.

Notwithstanding, appellee erroneously urges and the lower court held, that the Home Owners Loan Act of 1933 by implication evidences a Congressional intent to exclude shares in savings and loan associations from the operation of R. S. 5219. There is, however, nothing in the Home Owners Loan Act nor its Congressional history that supports such a conclusion. The Act provides merely that states may not impose a greater tax on federal associations than that imposed upon like local associations. The Act is silent as to how shares in federal associations shall be taxed by a state and in no way prescribes how state associations or their shares shall be taxed. Such Congressional prohibition is in no way inconsistent with the equally clear injunction of R. S. 5219 in respect to shares of national banks.

In protecting federal savings and loan associations from discrimination in favor of like state institutions, the 1933 Act in no way relieves a state from the obligation to safeguard national bank shares from state discrimination in favor of other moneyed capital (whether or not invested in state or federal savings and loan associations), when, as here, such moneyed capital is employed in keen competition with a substantial phase of the business of national banks.

If Congress, in enacting the Home Owners Loan Act of 1933, had intended that moneyed capital employed by such institutions were to receive favored tax treatment by states over tax treatment of shares of national banks—notwithstanding the unqualified prohibition to the contrary of R. S. 5219—Congress would have **expressly** so provided in the 1933 statute and to that extent **expressly** repealed R. S. 5219. There is no such express limitation or repeal of R. S. 5219 in the Home Owners Loan Act of 1933 and, contrary to the lower court's conclusion, there is no such repeal by implication.

As this Court has often held, it does not look with favor upon a claim of repeal of important legislation by implication—particularly in view of the pronouncement in *Hartford*, supra, and earlier cases that R. S. 5219 is not limited to other moneyed capital employed solely in the operations of banks of deposit.

The Michigan Supreme Court erred in substituting a different test of discrimination—in effect, a different tax—than that permitted by R. S. 5219 for a tax on shares.

Act 9 imposes a tax on shares of national banks at a “greater rate than is assessed upon other [competing] moneyed capital.”

Act 9 is a tax on shares of national banks. Under R. S. 5219, Sec. 1 (a), such a tax is in lieu of the other three methods permitted to a state taxing national banks or their shares. Sec. 1 (b) specifically provides the test and standard of tax equality and enjoins the State as follows:

“Sec. 1 (b) In the case of a tax on said shares the tax imposed shall **not** be at a greater rate than is assessed upon other moneyed capital [shares in savings and loan associations] in the hands of individual citizens of such State coming into competition with the business of national banks . . .”

Under Act 9, the State of Michigan imposed a tax on shares of national banks at the rate of \$5.50 per \$1,000, based on their capital accounts (capital, **plus** surplus and undivided profits).^[39] In comparison, the State taxed shares of savings and loan associations at the rate of \$.40 per \$1,000 of paid-in capital (**excluding** surplus, undivided profits and reserves).^[40] In addition, state savings and loan associations—but not federal—were subject to an annual privilege tax of \$.25 per \$1,000 of capital and legal reserves (**excluding** surplus, general

^[39]C. L. '48, Sec. 205.132a (1953 Supp.); M.S.A. 7.556 (2a).

^[40]C. L. '48, Sec. 205.132; M.S.A. Sec. 7.556.

reserves and undivided profits).^[41]

Exhibit 208 (R. 1270a) lists all state taxes imposed upon shares of national banks and of savings and loan associations, as well as other state taxes imposed upon either or both such banks and associations, with but one exception.^[42] In this list of state taxes are taxes imposed upon both national banks and savings and loan associations alike, at the same rate and in the same manner, (1) real estate taxes, and (2) unemployment taxes. Therefore, these need not be considered in determining "greater rate." Nor should the fee charged for annual examination of state associations by the state supervisory agency be considered. The fee is for a service and is not a tax. National banks and federal savings and loan associations pay comparable examination fees for examinations by federal supervisory agencies. At all events, the amount of these fees is not substantial. The only other state taxes imposed upon a few—but not all—savings and loan

^[41]C. L. 48, Sec. 450.304a, M.S.A. Sec. 21.206.

The state associations get their right to do business from the state and the state levies a tax "upon the privilege of exercising corporate franchises." M.S.A. 21.205⁹ as amended by Act 183 of 1952. Appellant national bank as well as federal savings and loan associations obtains its "privilege of exercising corporate franchises" from the U.S. and the State has no basis for charge therefor. Therefore, the amount of the franchise taxes should not even be included in determining the comparative tax rates on shares of the respective institutions. Nevertheless, even including this tax, the discrimination against shares of national banks is approximately 8 to 1 with respect to state associations and 13 to 1 with respect to federal associations.

^[42]Section 2 of the Intangibles Tax (Act 301 of the Public Acts of 1939, as amended) levied a tax at the rate of 1/25 of 1% on bank deposits as of December 31, 1952. The tax paid by appellant bank pursuant to this statute for the year 1952 was \$100,318.24 (Exhibit 1). This tax was not paid by savings and loan associations because "The savings and loan associations of Michigan cannot accept deposits, and, therefore, had none." (358 Mich. at 619; R. 1340).

associations, and not imposed upon banks, are inconsequential.⁽⁴³⁾ See Ex. 208, R. 1270a.

Clearly, therefore, Act 9 imposes a tax on shares of national banks at a rate more than 8 times greater than the tax on domestic savings and loan association shares (\$5.50 per thousand compared to 65 cents per thousand), and more than 13 times greater than the tax on federal savings and loan association shares (\$5.50 per thousand compared to 40 cents per thousand). See footnote 41. This discrimination is further intensified by the fact that, under the tax statute, *supra*, page 47, savings and loan shares are undervalued in relation to bank shares in that the association reserves and undivided profits are not included in the tax base at all. This amounts to \$39,415,000* as to association shares in Michigan in 1952 (R. 960a).

⁽⁴³⁾The following other state taxes shown in Ex. 208, R. 1270a. are called to the Court's attention solely for the purpose of completeness:

Savings and loan associations were subject to a tangible *personal property tax* (C. L. '48, Sec. 211.8, et seq.; M.S.A. Sec. 7.8, et seq.) to which national banks were not subject. However, the tax paid, if any, was insignificant. (Six of the associations located where appellant operates paid no personal property tax. The largest amount paid by any such association was less than \$500.00.)

Sec. 3 of Act 183, P.A. 1952 (C. L. '48, Sec. 450.303; M.S.A. 21.203) imposed a *franchise tax* on domestic savings and loan associations of 1/10 mill upon their authorized capital. However, this tax is paid only at the time the articles of incorporation are filed or upon an increase in authorized capital stock. It is not an annual tax. During the year 1952, only one association doing business in a city in which plaintiff bank operated (East Lansing Savings and Loan Association) paid such a tax (\$600.00).

States have no power to impose a *use tax* upon national banks for a privilege granted to them by the federal government. At all events, the use tax paid by all 17 savings and loan associations (in the total amount of \$579.09) is insignificant.

*By 1956, these reserves and undivided profits of associations operating in Michigan had increased almost 100% to over \$74,000,000 (R962a).

R. S. 5219 clearly establishes the basis of comparison for determining discrimination. When the tax, as here, is upon national bank shares,

“... the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens...”

This necessarily involves, as this Court has recognized, a comparison between the tax burden imposed upon national bank shares and that imposed upon “other moneyed capital in the hands of individual citizens.” It is not disputed in this case that shares in savings and loan associations are “moneyed capital in the hands of individual citizens.”

In *People v. Weaver*, 100 U.S. 539, 545; 25 L. Ed. 705, the factors to be considered in making the comparison were described:

“Congress had in its mind an **assessment**, a **rate** of assessment, and a **valuation**; and, taking all these together, the taxation on these shares was not to be greater than on other moneyed capital.”^[44]

In *Weaver*, the rate was the same, but the valuation was different. “Other moneyed capital” was valued on a lower basis, and the result was a discrimination prohibited by R. S. 5219. Here, not only is the basis of valuation of national bank shares higher than the valuation of savings and loan shares, but the rate of assessment greatly magnifies the discrimination, national bank shares being taxed at a rate of 8 to 13 times greater than the tax imposed on “other moneyed capital” (shares of savings and loan associations). The result is the same, a discrimination prohibited by R. S. 5219.

This Court said in *Pelton v. National Bank*, 101 U.S. 143, 146; 25 L. Ed. 901:

“It is sufficient to say that we are quite satisfied that any system of assessment of **taxes which exacts** from the owner of the shares of a national bank a **larger sum in**

^[44] Emphasis that of the Court.

proportion to their actual value than it does from the owner of other moneyed capital valued in like manner, does tax them at a greater rate within the meaning of the act of Congress."

Where the bank shares and "other moneyed capital" are "valued in like manner," the only remaining factor for consideration in determining whether there is discrimination under R. S. 5219 is the rate of tax imposed upon the bank shares as compared with the rate imposed upon "other moneyed capital." This is precisely what this Court did in *Merchants' National Bank of Richmond v. City of Richmond*, 256 U.S. 635; 65 L. Ed. 1135 (tax on bank shares approximately 3.5 times greater than tax on other competing moneyed capital); *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239; 76 L. Ed. 265 (approximately 6 times greater); *Minnesota v. First National Bank of St. Paul*, 273 U.S. 561; 71 L. Ed. 774 (approximately 8 times greater); and *First National Bank of Guthrie Center v. Anderson*, 269 U.S. 341; 70 L. Ed. 295 (approximately 29 times greater).

Where valuation is on the same basis, but the tax on national shares is at a greater rate, there are no problems such as appellee suggests relative to "total tax burden," the lack of "equivalent tax burden," greater "tax impact" or lack of "substantial tax equivalence." Such problems arise only in cases where there are different measures or methods of valuation^[45] or entirely different methods or systems of taxation,^[46] as between national bank shares and other moneyed capital.

Clearly, in the case at bar, not only (a) is the rate of tax on national bank shares greater, but (b) the valuation of such shares is higher—because it includes all reserves and undivided profits, which are excluded by statute in valuing

^[45]*People v. Weaver, supra.*

^[46]*Tradesmen's National Bank v. Oklahoma*, 309 U.S. 560; 84 L. Ed. 947.

the association shares. The tax is discriminatory both as to rate and as to valuation.

The Michigan Supreme Court applied a test of discrimination expressly rejected by this Court.

Notwithstanding the proven discrimination, the Michigan Court. (358 Mich. 611, 633) makes a comparison of the total tax burden (of all kinds of levies) on the total assets—without deducting liabilities—of Michigan National Bank and of savings and loan associations and finds the same to be substantially equivalent. This method of comparison was expressly rejected in *Minnesota, infra*.

The tax imposed by Act 9 is “on said shares”—which this Court has held to mean assets after deducting all liabilities—not gross “assets of the bank without deduction of its liabilities,” *Minnesota v. First National Bank*, 273 U.S. 561, 564; 71 L. Ed. 774; *Des Moines National Bank v. Fairweather*, 263 U.S. 103; 68 L. Ed. 191. As this Court said in *Minnesota* (p. 564):

“... it is urged, if bank shares were taxed at the same rate without deducting the bank's liabilities in ascertaining the value of their shares, the amount of the tax would be approximately the same. **This argument ignores the fact that the tax authorized by §5219 is against the holders of the bank shares and is measured by the value of the shares, and not by the assets of the bank without deduction of its liabilities,** *Des Moines Nat. Bank v. Fairweather*, 263 U.S. 103, (68 L. Ed. 191, 44 Sup. Ct. Rep. 23) and that the bank share tax must be compared with the tax assessed on competing moneyed capital of individuals invested in credits, or the tax on capital invested by individuals in the shares of corporations whose business competes with that of national banks . . . (cases cited).”

The state can levy taxes in respect of national banks only in such manner and to such extent as permitted by act of Congress. Congress has not permitted and the state cannot

levy a tax on total assets under R. S. 5219. The state cannot levy a tax on assets at all other than real estate. The state now comes along and says: "See how we have gotten around not being permitted to levy a tax on assets. We have levied a tax on bank shares which carries the same aggregate burden as a tax on total assets." As Congress has not permitted a tax on total assets, the use of total assets as a basis for comparison cannot be proper.

The Michigan Supreme Court, in considering Act 9, a tax on shares, has used a basis for comparison explicitly rejected by this Court.¹⁴⁷¹

Appellee's other suggested test of discrimination is erroneous and in conflict with R. S. 5219.

Appellee in its Motion to Dismiss or Affirm, page 17, suggests another erroneous basis for tax comparison. Appellee contends that the tax burden should be related to "the reserves and undivided profits of the savings and loan associations (and) with the actual value of national bank stock" (capital, surplus, and undivided profits), erroneously **excluding** the substantial amount invested in shares of **capital** of the savings and loan associations.

¹⁴⁷¹Nor do the cases of this Court cited by the Michigan Supreme Court (358 Mich. 632), support a comparison of tax burden to assets (without deducting liabilities) explicitly prohibited by *Minnesota* and *Fairweather*. They merely stand for the proposition that where different methods of valuation are used, a difference in rate may not necessarily be discriminatory in a state tax on shares (cf. *People v. Weaver*, 100 U.S. 539; 25 L. Ed. 705); or, where a different method of taxation is used; if, when translated into the method employed in taxing national banks or its shares, there is approximate equality, discrimination under R. S. 5219 does not necessarily obtain (*Tradesmen's National Bank of Oklahoma City v. Oklahoma Tax Commission*, 309 U.S. 560; 84 L. Ed. 947; *Corington v. First National Bank of Corington*, 198 U.S. 100; 49 L. Ed. 963.)

This tax comparison was neither adopted by the Michigan Supreme Court nor by the appellee's own expert witness.^[48] It necessarily assumes a tax which the State of Michigan does not impose, i.e., a tax on surplus and undivided profits of the associations. The only tax imposed by the State is a tax on the paid-in value of their shares—**excluding** their substantial general reserves and undivided profits (in excess of \$39,415,000 for all associations in the state, R. 960a).

Appellee's argument is predicated upon appellee's erroneous claim that an investment in a savings and loan association is a deposit-debt, rather than a share-equity. Appellee thereby attempts to attribute the entire tax (which under the Intangibles Tax Act is on shares of savings and loan associations) solely to reserves and undivided profits—permitting the paid in value of the shares of savings and loan associations to escape the tax entirely.

Investors in savings and loan associations are stockholders—not depositors.

A savings and loan association "is a private corporation for profit." By statute and in substance investors are "shareholders"—not depositors or creditors. Savings and loan in-

^[48]As to this manner of comparing "tax burden," appellee's own witness, Professor Woodworth, stated: "I rejected that in my thinking as a proper basis of comparison." (R. 863a)

Nor does *Davenport Bank v. Davenport Board of Equalization*, 123 U.S. 83; 31 L. Ed. 94, cited by appellee, support appellee's contention that the capital invested in savings and loan association shares may be excluded in valuing other moneyed capital. In *Davenport*, which involved a stock corporation savings bank, the capital of the corporation was subject to the tax and this Court held: "... the same rate per cent is assessed upon the capital of the savings banks as upon the shares of the national banks."

Appellee, relying on dicta in *Amoskeag Savings Bank v. Purdy*, 231 U.S. 373; 58 L. Ed. 274, ignores the fact that in *Amoskeag* the proposition for which appellee cites that case was not urged and was not an issue in the case.

vestors are an **aggregation of persons** (both individual and corporate) who are engaged in the mortgage lending business for profit, in corporate form.^[49]

Both the state and federal statutes under which state and federal associations are incorporated explicitly and expressly provide that savings and loan associations may not receive deposits. Mich. C.L. 1948, Sec. 489.37; M. S. A. 1957 Rev., Sec. 23.580; Fed. Code Ann., Sec. 1464 (b).

Moreover, in every substantial respect, investors in savings and loan associations are shareholders and not depositors (R164a, 245a, 295a, 372a). Unlike a depositor, a shareholder in a savings and loan association is not a creditor (R246a, 341a, 188a). Even after making application for withdrawal of his investment, Mich. Stat. Ann., Sec. 23.546 provides:

"Shareholders . . . shall remain shareholders until paid and shall not become creditors."

[49] To illustrate:—If an individual operated a mortgage business in non-corporate form—and received as income interest on mortgage loans, less expenses and a reasonable reserve for losses, keeping principal payments received from mortgage loans reinvested in new mortgage loans—such operation would essentially be comparable to the business of savings and loan associations in corporate form. He could keep all of this principal invested in the business or withdraw such part as he wished. His investment in the business would be put out on loan to mortgage borrowers, from whom he would receive (a) repayment of fixed principal (par), in installments, plus (b) interest upon such loans. His only income would be the interest from the loans. On windup of such business, any reserve for losses retained in the business would naturally be retained by him. That is essentially the position of a shareholder investing money in a savings and loan association—except that the association does business in corporate form, and instead of an individual, there are many shareholders, all engaged in a commercial enterprise, making loans to the general public, on the security of residential mortgages, for the highest return obtainable competitively—for a profit.

(Continued on next page)

An investor is a shareholder in a corporation engaged principally in the mortgage business (R295a, 372a). As such, he assumes the risks of profit or loss in the operation of such business (R164a, 165a, 245a). He receives dividends, if declared, the payment and amount of which are dependent upon whether the operations of the corporation are profitable (R245a, 295a, 342a, 425a, 188a). Unlike a depositor, he has no contractual right to receive interest, regardless of the successful or unprofitable operation of the business (R163a, 295a, 341a, 372a, 425a). He has voting rights dependent upon the number of shares owned and accordingly is vested with ultimate control over the operations of the association (R165a, 195a, 293-4a, 374a). Conversely, a depositor, as a creditor, has no voice in the operation of a bank.

Upon liquidation, shareholders in a savings and loan association share in the entire equity of the association, capital, surplus, and undivided profits. His rights are, however, subordinate to those of creditors. Upon liquidation, a depositor receives only repayment of his fixed debt, although his claim has priority over the interest of shareholders.

In *Michigan Savings and Loan League v. Municipal Finance Commission of the State of Michigan* (1956), 347 Mich. 311, 319; 79 N. W. 2d 590, the plaintiff, seeking a determination that State agencies were not prohibited under the Michigan Constitution from subscribing for shares in savings and loan associations:

(Continued from page 55)

Money of individuals engaged in the mortgage lending business in competition with the business of national banks is "other moneyed capital" within R. S. 5219 and cannot be taxed at a rate less than that imposed upon shares of national banks. *Hartford, supra*, p. 34. So, too, if the individuals engage in such business in corporate form, their shares are "other moneyed capital" within R. S. 5219; *supra*, p. 29.

"... argued, in substance, that investments in savings and loan associations of the character involved in this case **should not be regarded as stock purchases**, that the investor is actually depositing funds for safekeeping, that the transaction is analogous to a deposit in the savings department of a bank . . ."^[50]

Rejecting this contention, the Michigan Supreme Court held (322) :

"This Court has recognized that **investors in savings and loan associations are subscribers to, or purchasers of, stock therein . . .**

"... It may not accept deposits in the sense that such are received by banks . . ."

^[50] There—contrary to his present position—the Attorney General of the State of Michigan successfully opposed such contention, arguing in his Brief to the Michigan Supreme Court in that case:

"Plaintiffs cannot successfully contend that building and loan and savings and loan associations are not corporations. **A building and loan association is a private corporation for profit.**" (Brief, p. 7.)

"The Michigan Building and Loan Act and the federal statute providing for federal savings and loan associations settle the question whether payments on shares constitute deposits. Section 37 of the Michigan act . . . expressly prohibits . . . advertising for or receiving deposits . . . Likewise, the federal act . . . forbids the acceptance of deposits." (Brief, p. 15.)

"... Plaintiffs consider the insurance feature one element indicating that the investor on such insured shares is not a shareholder. Such insurance would make an investment in shares a safer investment than it would be without such insurance, but it would seem self evident that it could not change the essential nature of the stock, nor the relation between the shareholder and the association. Suppose, for example, a person owns \$20,000 of fully paid shares in a building and loan association. Is he partly a shareholder and partly something else? And of which shares is he a shareholder? It is respectfully submitted that the insurance feature has no bearing on the issue." (Brief, p. 17.)

Even if the shares were like "deposits" in a mutual savings bank, they would be "other moneyed capital" and could not be valued on a lower basis nor taxed at a lower rate than national bank shares.

In no event are shareholders of savings and loan associations like depositors of a bank. The most that has been suggested is that they are akin to "depositors" of the old mutual savings banks (even though directly contrary to Federal statute, Michigan statute, and Michigan decision). But, even if this be so, appellee's position is not tenable under R. S. 5219. The Federal statute requires that national bank shares shall not be taxed at a greater rate than **other moneyed capital** in the hands of **individual citizens**. Whether shareholder (as appellant submits) or depositor (as appellee contends), the investment in savings and loan associations by individuals is "other moneyed capital," within the meaning of R. S. 5219. In *Mercantile Bank v. New York*, 121 U. S. 138, 157; 30 L. Ed. 895, involving mutual savings banks, this Court said (p. 157):

"It cannot be denied that these deposits constitute moneyed capital in the hands of individuals within the terms of any definition which can be given to that phrase."

Since, in the case at bar, this moneyed capital, employed for profit in the mortgage lending business in competition with the business of national banks, is taxed at a substantially lower rate than national bank shares, R. S. 5219 is violated.

In effect, what appellee urges is that national bank shares should be valued at their actual value (**capital plus** surplus, and undivided profits) whereas other competing moneyed capital, shares (or deposits) in savings and loan associations, should be valued at only a small fraction of their actual value (reserves and undivided profits, but **excluding "paid in" capital**). By thus greatly and erroneously under-

valuing "other moneyed capital," appellee concludes there is no tax discrimination.

Clearly, the foregoing argument of appellee is contrary to *People v. Weaver, supra*, cited by appellee, and to this Court's holding in *Pelton v. National Bank*, 101 U. S. 143, 146, *supra*, page 50.

Discrimination is determined by effect of tax, rather than by hostile intent.

Appellee urges, and the lower court held, that the Michigan tax is not discriminatory nor violative of R. S. 5219, because—

"Michigan's tax treatment . . . does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks."

In *Hartford, supra*, the same contention was made by the appellee and had been sustained by the Supreme Court of Wisconsin. However, this Court unequivocally rejected this position, holding (273 U. S. 560):

"But a consideration of the entire course of judicial decision on this subject can leave no doubt that state legislation and **taxing measures which by their necessary operation and effect discriminate** against capital invested in national bank shares in the manner described **are intended to be forbidden.**"

3.

The Michigan Supreme Court erred in permitting the State, under a so-called doctrine of "partial exemption," to discriminate against national bank shares in favor of other moneyed capital employed under private management, for profit, in competition with a substantial phase of the business of national banks.

The remaining basic question is whether or not a state, for reasons of its own—notwithstanding R. S. 5219—may "partially exempt" from taxation (prefer taxwise)

- (1) "other moneyed capital" (savings and loan shares);
- (2) clearly "coming into competition with [a substantial phase of] the business of national banks," and
- (3) "substantial when compared with the capitalization of national banks" in the state.

The lower Court erroneously concluded that the State of Michigan could do so. (358 Mich. 611, 620, 639), notwithstanding that no such exception is expressed in the statute, and that such a "partial exemption," if recognized, would defeat the purpose of the statute, i.e. the avoidance of discrimination against national bank shares in favor of huge amounts of other moneyed capital locally employed in competition with national banks.

The State asserts and the Michigan Court affirms the assertion that the difference between the rate of tax on national bank shares and shares of savings and loan associations in Michigan is a "partial exemption" of the latter, and hence justified. To indulge in semantics should not get one anywhere, and that is what the State does here. None of these shares are exempt from tax—they are merely taxed at a lower or preferred rate. **A difference in rate is a discrimination.** Under the facts of this case, we submit, a state has no power

to discriminate against national banks or their shares under a so-called doctrine of "partial exemption."

In reaching its conclusion that Michigan may exempt or prefer savings and loan associations or their shares, the Michigan Court relied upon eight cases of this Court, none of which involved savings and loan associations and all of which were decided prior to 1900, and two lower court cases:

(a) Three of these cases^[51] involved the exemption of property—**not "moneyed capital,"** as that term has been defined since *Mercantile*, supra, p. 29—and therefore **not in competition** with the business of national banks;

(b) Three of these cases,^[52] including *Mercantile*, involved mutual savings banks which (i) were **not found in competition** with the **then** business of national banks; (ii) were **publicly managed** for public or quasi-charitable purposes; and (iii) were **not privately operated**, in "a commercial sense," **for profit**;

(c) Two of these cases^[53] are clearly not in point as they in no way involved the question presented by this appeal, except by way of dicta in reviewing prior cases (mentioned and distinguished under (a) and (b) above);

(d) The two lower federal court cases,^[54] *Hubbard*

^[51]*Hepburn v. School Directors*, 23 Wall (90 U.S.) 480, 485; 23 L. Ed. 112; *Adams v. Nashville*, 95 U.S. 19, 22; 24 L. Ed. 369; *Boyer v. Boyer*, 113 U.S. 689, 693; 28 L. Ed. 1089.

^[52]*Mercantile Bank v. New York*, 121 U.S. 138; 30 L. Ed. 895; *Davenport Bank v. Davenport Board of Equalization*, 123 U.S. 83, 86; 31 L. Ed. 94; *Bank of Redemption v. Boston*, 125 U.S. 60; 31 L. Ed. 689.

^[53]*Aberdeen Bank v. Chehalis County*, 166 U.S. 440, 460, 461; 41 L. Ed. 1069; *First National Bank of Wellington v. Chapman*, 173 U.S. 205, 214; 43 L. Ed. 669.

^[54]*Mercantile National Bank of Cleveland v. Hubbard* (ND Ohio) 98 F 465, 471; *Hoenig v. Huntington National Bank of Columbus*, (CCA 6) 59 F 2d 479, 482, certiorari denied 287 U.S. 648; 77 L. Ed. 560.

and *Hoenig*, involved savings and loan associations which were **not in competition** with the **then** business of national banks.

These cases, we submit, are inapposite.

The first three cases, as stated, involved property not "moneyed capital" as presently defined. When these cases were decided (1874-1885), the term "moneyed capital" was construed to include every type of intangible personal property and this Court, with that sweeping a definition in mind, simply affirmed the states' right to **totally, not partially**, exempt from taxation some property, such as municipal bonds, homesteads, the property of clergymen and the like—which was not in competition with the business of national banks. Competition was not then a factor and was not considered.

The next three cases decided in 1887 and 1888, involved, amongst other things, mutual savings banks. *Mercantile* introduced the present concept of "moneyed capital" and was the first to consider "competition" as a factor. As to deposits in savings banks, this Court held such moneyed capital could be totally exempt without violating R. S. 5219 because—national banks **then** were not permitted to engage in the mortgage loan business or to accept savings deposits, *supra*, p. 18—

"No one can suppose for a moment that savings banks come into any possible competition with national banks . . ." (121 U.S. 161).

This is not so today as to savings banks. More importantly, it is clear that **today** savings and loan associations are in sharp competition with the business of national banks, *supra*, pp. 9-20.

Davenport held only that there was no discrimination be-

tween the tax imposed upon national bank shares and on shares of savings banks in Iowa.

In *Bank of Redemption* (1888), decided one year after *Mercantile*, it was, however, urged by plaintiff bank that "...Massachusetts Savings Banks are permitted to transact a banking business in the way of loans upon personal securities,^[55] which assimilate them more closely to national banks" (125 U.S. 68) than to the savings banks involved in *Mercantile*. Without making any finding as to whether these investments were legally available to—or employed by—national banks, the Court summarily dismissed the point, saying (125 U.S. 68):

"But the difference mentioned, if it exists at all, is immaterial; the **main purpose and chief object** of savings banks, as organized under the laws of Massachusetts, are the same as those in New York, as considered in the case of the *Mercantile Bank*. They are substantially institutions, under **public management**, in pursuance of a great and beneficial public policy, organized for the purpose of investing the savings of small depositors, and **not** as banking institutions in the commercial sense of that phrase."

The Wisconsin Court in *Hartford*, 187 Wis. 290, 203 N.W. 721, 727-9, (like the Michigan Court in the instant case), expressly relied upon the foregoing language from *Bank of Redemption*, *supra*, (as well as the so-called partial exemption cases relied upon by the Michigan Court in the case at bar) (203 N.W. 727-9), and the Wisconsin Court concluded that the "object" and "purpose" of building and loan associa-

^[55]This was one of the 8 classes of investments open to Massachusetts savings banks. It was, however, to be employed only "if the deposits cannot be conveniently invested in the modes heretofore named." These investments were moreover limited to not more than $\frac{1}{3}$ of the deposits in such banks, and required two sureties on such loans.

tions, as well as other moneyed capital—regardless of manner of employment of capital—was the test of “competition” within the meaning of R. S. 5219. This partial exemption argument was also urged by the State in its brief before the Supreme Court in *Hartford* (pp. 37-42): Nevertheless, this Court reversed the Wisconsin Supreme Court’s decision and specifically stated (273 U.S. 557):

“Competition in the sense intended arises not from the character of business of those who compete but from the manner of the employment of the capital at their command.”

To the extent, if any, that *Bank of Redemption, supra*, is based upon a different test, it is necessarily overruled by later decisions, particularly *Hartford*.

There is another important distinction between the early savings bank cases and the instant case involving present-day savings and loan associations. An institution managed and operated by “public trustees”^[56] solely to conserve the savings of poor people can hardly be said to be using its moneyed capital in competition with national banks. As the Court recognized in *Bank of Redemption*, they were not “banking institutions in the commercial sense of that phrase” (68).

This Court in the early cases equated “deposits in savings banks”—publicly managed and operated to conserve funds of poor people, not for profit in the “commercial sense”—with “moneys belonging to charitable institutions.” See *Aberdeen Bank v. Chehalis County*, 166 U.S. 440, 460-1;

^[56]The character of the early savings banks is described by this Court in *Bank of Redemption v. Boston*, 125 US 60, in which the Court said:

“The institutions themselves, although corporations, have no capital stock and are managed by trustees, not selected by the depositors, but by public authority.” (66)

First National Bank of Wellington v. Chapman, 173 U.S. 205, 214.

On the other hand, **today** "a building and loan association is a private corporation for profit." This we contend. This the Attorney General of Michigan also acknowledged and successfully urged in *Michigan Savings & Loan League v. Municipal Finance Commission of the State of Michigan*, *supra*, p. 57, foot note 50.

Change in the manner and scope of doing business by savings and loan associations and national banks since 1900 makes the early cases inapplicable.

In *Hartford*, this Court stated:

"Some of the cases dealing with the technical significance of the term competition in this field were decided **before** national banks were permitted to invest in mortgages as they **now** are. Act of December 23, 1913, c. 6, §24, 38 Stat. 251, 273; Act of September 7, 1916, c. 461, 39 Stat. 752, 754; Act of February 25, 1927, §24. And others go no further than to hold that in the absence of allegation and proof of competition with national banking capital, it cannot be said that an offending discrimination exists" (273 U.S. 558).

As previously set forth, *supra*, pp. 18-20, national banks did not have authority to make mortgage loans generally until the Act of September 7, 1916, and then the authority was quite restricted. The restriction was lessened by the Act of February 25, 1927 and was substantially removed by the Act of August 23, 1935, permitting conventional loans of 60% of assessed value for a 10 year term if 40% of the principal was amortized within 10 years; the Act of June 27, 1934, authorizing the making of F.H.A. mortgages, and the Comptroller General's decision of 1944 authorizing the making of V.A. (or G.I.) home loans. The first express mention by Con-

gress of a national bank's right to accept "savings deposits" was in 1927. See footnote 27A, *supra*, p. 18.^[57]

It necessarily follows that cases involving the making by state institutions or others of mortgage loans or of accepting and investing savings deposits at a time when national banks did not have authority or were not exercising authority to do either are inapplicable to present day conditions.

Savings and Loan Associations of the early days.

Not only do appellee and the court below rely upon early cases when national banks could not and did not compete, but at such time savings and loan associations were substantially different in character and in their method, manner and scope of operation from the large, commercially operated, profit-making, savings and loan associations of the present day.

The mutual savings banks and building and loan associations of 1900 and earlier years were both peculiar and unique quasi-charitable institutions, employing their moneyed capital exclusively for the sole benefit of "poor people" to aid them in "accumulating small savings" and or in "building small houses." Both mutual savings banks^[58] and savings

^[57]Such extensions of power have not been attacked except in *Franklin National Bank v. N. Y.*, 347 U.S. 373; 98 L. Ed. 767; where this Court, rejecting such attack, said:

"That these federal institutions may be at no disadvantage in competition with state-created institutions, the Federal Government has frequently expanded their functions and authority." (375)

^[58]Mutual savings banks, in their origin, were designed solely for persons of modest means, primarily the working classes; mariners, tradesmen, clerks, mechanics, servants and others. Until the advent of these banks of deposit, which operated under public man-

(Continued on next page)

and loan associations served a unique function not open to the national banks of their day.

(Continued from page 66)

agement, there was no place where wage-earners could safely put aside some of their earnings for future needs. Prior to 1900, there was no savings feature in life insurance policies. Postal savings were not adopted until 1910, and **national banks were not authorized to accept savings deposits until 1927**. Investments by savings banks were strictly defined by statute. Usually they were permitted to invest in government securities of various types and in **real estate mortgages**, primarily on residential properties, **neither of which were in competition with national banks as they were then operated**. [Lintner, *Mutual Savings Banks in the Savings and Mortgage Markets*, (Harvard University, 1948), Chp. II; *The Miracle of Mutual Savings, 1834-1934* (Bowery Savings Bank); *Mutual Savings Banking* (National Ass'n of Mutual Savings Banks, 1953); 4 McKinney's Consolidated Laws of New York, Secs. 230 et seq.]

The Circuit Court in *Mercantile National Bank v. City of New York* (1886), 28 Fed. 776 said (787-8) :

"* * * Savings banks in this state are not permitted to owe any depositor more than the sum of \$3,000 (Laws 1878, c. 347, §2;) and it appears by the report of the superintendent of the banking department that the average of these deposits on the first day of January, 1886, was \$378 each. **These deposits represent mainly the savings of people of small means.** It is not probable that a twentieth part of the whole would be actually reached for taxation if they were not exempt. **Such accumulations tend to the extinction of pauperism, to the encouragement of economy, and to the general thrift and comfort of the masses of the people.** It is as much the part of a wise policy on the part of the state to encourage them as it is to encourage benevolent and charitable institutions. Such an exemption reduces the burden of taxation on other moneyed capital." (Emphasis supplied.)

This Court, in affirming the circuit court, noted that it did so for substantially the same reasons and in its opinion described the savings bank as being (121 U.S. 161) :

"* * * what their name indicates, banks of deposit for the accumulation of small savings belonging to the industrious and thrifty. To promote their growth and progress is the obvious interest and manifest policy of the state."

The Act which first authorized building and loan associations^[58a] in Michigan (Act 50 of P. A. 1887), and which was typical nationally, contemplated an association in which there was no distinction between the savings and borrowing members. They were mutual in operation. Borrowers had to be subscribers to and investors in the capital stock of the association.

No one could participate in the benefits they afforded without becoming a shareholder. Individuals became investing members of these organizations in the expectation of ultimately becoming borrowing members as well. Membership implied not only regular payments to the association for a considerable period of time, but also risk of losses. Members could not cancel their memberships or withdraw their shares before maturity without incurring heavy penalties. The fact that the members were both the borrowers and the lenders was the essence of the 'mutuality'^[59] of these organizations.

[58a] Since 1935 they have also been called savings and loan associations, Act 116, Public Acts 1935.

[59] Such associations were truly "mutual" in the sense that both the borrowing and savings member shared equally in the gains or losses of the associations. Thus a borrowing member, whose loan was limited to the full value of his stock, shared in the profits of the association by receiving on his shares the same dividend paid nonborrowing members on their shares and, conversely, if the association failed he was liable not only for the amount unpaid on his shares, but also the mortgage on his property was subject to foreclosure to pay his debt without credit being given for amounts paid on his shares. *Russell v. Pierce* (1899), 121 Mich. 208; 80 NW 118; *Home Savings and Loan v. Mason* (1901) 127 Mich. 676; 87 NW 74.

A significant feature of the early association was the requirement that payments be on an installment basis payable periodically in an amount not to exceed \$2.00 per share. (Sec. 6 of Act 50.) Fines could be levied for nonpayment of installments when due. The result was enforced thrift. As an example, the Saginaw [Michigan] Savings and Loan Association (whose charter, by-laws and all amendments thereto are contained in Exhibit 97) in its original bylaws (1888) provided for \$100 par value stock to be paid for at the rate of 12½¢ weekly with a fine of 5¢ for delinquent weekly payments (Articles 12 and 15, R. 1205a; 1209a).

Loans were limited to those who had previously subscribed for the stock of the institution and no loan could be made a member in excess of the amount of his stock subscription. (Sec. 8 of Act 50.) **The operations of the association were confined to its membership and not open to the public.** Thus loans were the subject of competitive bidding restricted to the members at closed meetings held periodically. (Sec. 8 of Act 50) *Bechtel v. Saginaw Building & Loan Association*, 143 Mich. 599, 607-8; 107 NW 695.

The primary purpose of the early association was "... to encourage people of limited means to procure homes, and to make it possible for them to do so by advancing money to them to build their homes, secured by their stock [in the association] and real estate." *Myers v. Alpena Loan & Building Association* (1898), 117 Mich. 389, 392-3; 75 NW 944. Such an association could not be operated in the sole interest of the nonborrowing members at the expense of the borrower. *Myers v. Alpena Loan & Building Ass'n*, *supra*. **The investment in shares of corporations, partnerships, pension funds or fiduciaries—which is common today—was in the early**

days deemed inconsistent with the purpose of the Statute and prohibited. Report and Opinions of Attorney General, 1903, p. 58. There it was said (quoting 4 Endlich on Building Associations, 2nd Ed., p. 1028) :

• "It certainly does not appear to be consistent with the purposes of a building association's being, nor in any wise related to, the policy which justifies the creation of these institutions with the extraordinary powers they possess, to have its membership in part composed of corporations, . . ."

Judge Taft, in 1899, described the early building and loan associations in *Mercantile Nat. Bank v. Hubbard*, 98 F. 465, 471 as follows:

" * * * It seems to me that building associations are certainly not to be differentiated in their purpose or object, or practical effect, from savings banks, and that the capital invested in them, though subject to a somewhat different rule of taxation, cannot be regarded as moneyed capital in competition with the moneyed capital in national banks, any more than is capital invested in savings banks. The chief object of building associations is to encourage the building of small houses by poor people, and the saving from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house."

The "just cause" or "just reason" language of the pre-1900 cases on which the Supreme Court of Michigan relies had to do with moneyed capital which (a) was not employed in competition with the then business of national banks and (b) was invested in associations, quasi-charitable in nature and operated for the benefit of "poor people."

The Modern Savings and Loan Association today is "a private corporation for profit" commercially, seeking business from all income classes of the general public and there is no "just reason" to partially exempt or to favor them taxwise.

The modern association bears no real resemblance to its early predecessor in scope or basic manner of operation. The name is the same and "many old forms have been preserved"; but "few of the associations have retained the substance of their earlier mutuality", *supra*, p. 23.

The modern shareholder is different from the shareholder of 1900.

In the first place, shareholders in the modern association are not comprised of "poor people."^[60] Shareholders in the modern associations come from the public at large and every economic and income class.^[61] Among present day investors are executives, professional people, business men, partnerships, corporations, pension funds, trustees, fiduciaries, scholarship funds, charitable organizations and churches, as well as individuals.^[62]

^[60]After the completion of plaintiff's case, the Trial Court, in denying defendants' (appellees') motion to dismiss, was impelled by the proof to observe that savings and loan institutions had changed—"at least the poor people angle is out of the picture." (R. 669a)

^[61]165a, 167a, 179a, 248a-249a, 294a, 345a, 375a, 426a; 1048-9a, 1172a.

^[62]R. 177a-178a, 194a-195a, 208a-210a, 254a, 294a-295a, 346a, 414a, 434a, 495a; 1090a, 1138a, 11760.

It is obvious that corporations, partnerships, trustees, charitable organizations, churches and pension funds do not invest in shares of savings and loan associations with the view of bidding for mortgage loan moneys of the associations with which to build small homes for themselves—as did the “poor” shareholders of the early days. In fact, the sole interest of all shareholders today is to obtain the highest profit and dividend rate consistent with competition and safety (494a). The fact that his investment will be used to finance homes for others (or for any other purpose) is of no interest to him except only to the extent that it provides a safe and profitable use for his funds. See *infra*, pp. 74-76.

The advertising of the modern association is extensive and intensive, directed through mass communication media (radio, newspaper, television, direct mail) to **every one** (regardless of economic class or income and whether or not an individual or corporation) who has money to invest, i.e., **the general public**.^[63] Shareholders are no longer limited to the neighborhood in which the association does its mortgage loan business, but are from the State at large, and even from the United States at large (R. 505a; 1083a; 1130a).

As testified to by one of the savings and loan witnesses, this type of investment is naturally made to a greater extent by the middle and upper income levels than the poorer people for the simple reason that they have larger resources available to invest (R. 1049).

The majority of the associations place no limit on the amount they will accept as an investment (R. 165a, 194a,

^[63]R.167a-169a, 194a, 198a, 293a, 339a, 375a, 424-a-425a; 1059a; 1144a.

294a; 1043a; 1171a). Rather, they welcomed as many and as large investments as they could obtain (R. 167a, 198a, 346a); although a few associations did place a maximum on the amount invested by a single shareholder (Eg., Saginaw Savings & Loan, \$50,000 (R. 374a)).

At the end of fiscal year 1952, the Lansing Branch of the Capital Savings & Loan Association had 230 shareholders who invested over \$3,713,000, averaging \$16,146 per shareholder (R. 999a). The Calhoun Federal Savings and Loan Association of Battle Creek had 112 shareholders who invested over \$1,501,418, or an average of \$13,405, (R. 1020a). The eleven associations from whom information could be obtained (none of which were in Detroit, and some in comparatively small communities) had in excess of 1047 shareholders who invested \$15,284,813, or an average holding of \$14,598.^[64]

The nature of the shareholders (e.g., corporations, partnerships, pension funds, trustees, some residing outside Michigan, etc. as well as individuals), the size of their shareholdings, and the manner of seeking investor-shareholders of all income and economic classes, clearly demonstrates that the modern associations are not comprised of "poor people . . . saving from their earnings, week by week, . . . an amount sufficient to pay their mortgage debt" to the association.

^[64]991a, 993a, 994a, 997a, 999a, 1000a, 1006a, 1011a, 1015a, 1020a, 1165a.

Undoubtedly there were thousands of shareholders who had invested in and owned stock (in associations in the same cities where appellant operated) of between \$5,000-\$10,000 inclusive, but such data was not produced at the trial.

The modern borrower is different from the borrower of 1900.

Borrowers from the associations today are not "poor people" seeking to "build . . . small houses,"^[65] but rather are drawn from the general public and are of the same income and economic classes^[66] as are the residential mortgagor borrowers from appellant bank. The class of property mortgaged and the terms of the mortgages are similar. *Supra*, pp. 11-14.

The modern associations are no longer mutual.

There is today no greater "mutuality" (i.e., identity between borrower and investor in shares) in these associations than exists between borrowers and investors in shares in appellant bank.

In modern associations, an investor is not required to be a borrower,^[67] and a borrower need not invest in shares.^[68] In practice, only a very small percentage of borrowers from the association were actually investors in its shares (R. 327a, 494a, 509a). Nor is there any real community of interest between such shareholders and borrowers. This is materially

^[65] Most associations during 1952 made loans in a substantial amount on the security of residential real estate for purposes other than home purchases such as for the purchase of automobiles, the payment of medical expenses and funeral expenses, investments and vacations (R. 276a, 292a, 348a, 383-384a, 419a, 429a).

Occasionally the associations also made loans secured by mortgages on commercial property (R. 1138-9a (for a supermarket, \$62,500), 1139a, 324a, 351a).

^[66] Executives, business and professional people, teachers, builders, as well as wage earners.

^[67] R. 166a, 168a, 200a, 251a, 342a, 427a, 490a, 885a.

^[68] R. 166a, 168a, 200a, 251a, 296a, 342a, 375a, 389a, 427a, 490, 885a.

different from the early associations where "individuals became investing members . . . in the expectation of ultimately becoming borrowing members, as well," *supra*, p. 23. **Today**, the interest of the investor and of the borrower is diametrically opposed. Borrowers are interested exclusively in obtaining the best mortgage loan terms available; whereas, the associations and their shareholders seek to get the best return on their investment consistent with sound business practices.^[69] Prosperity of the associations is reflected in increased dividends or undivided profits in which only the investors share, and not in any reduction in interest rate by which the borrower might benefit.

In the early associations "membership" was an economic reality, common to both shareholders and borrowers. **Today, only investors are truly members and shareholders. A borrower's membership is only a sham—a resort to old form, completely lacking substance.**

An investor, by the act of investing in the association becomes a shareholder and a member (R. 276a). As a shareholder, and necessarily therefore as a member, he has certain important legal rights. He has a right to share in the earnings [or losses] of the association;^[70] the right to share in the association reserves in the event of liquidation (R. 1058a); the right to assign his shares^[71] and the right to vote his shares [with some limitations] for the selection of association management.^[72] He, in fact, has a true legal and economic interest in the association.

Unlike the borrower from the early type of association, today's borrower need not be a member when he applies for

^[69]R. 330a, 343a, 344a, 437a, 467a, 494a, 495a.

^[70]R. 164a, 166a, 194a, 245a, 295a, 372a, 426a.

^[71]215a, 262a, 303a, 325a, 340a, 399a, 1147a, 1183a.

^[72]165a, 195a, 326a, 346a, 374a, 507a, 1050a, 1119a.

the loan, nor need he subscribe to or invest in the association's shares after the loan is consummated. His "membership," of which he is probably unaware, is simply a technical compliance with the statute. If his credit and security meet the loan requirements of the association, membership embraces him upon obtaining his loan.^[73] Having become a member, the borrower's only rights or obligations are his right to one vote and his obligation to repay his loan.^[74] His membership ceases upon repayment of his loan (R. 510a, 1179a). Consequently, the borrower from the modern association unlike his predecessor, neither shares in the profits nor assumes any loss resulting from the association's operations. The borrower today finds the association no different than any other mortgage lending institution, including appellant bank (R. 899a). Certainly this barren grant to a borrower of one vote and his obligation to repay his debt creates no "mutuality" or community of interest (as that term was understood in the earlier cases) between him and the investing shareholders.

The only "mutuality" that exists in the modern associations is that among the investing shareholders, who band together to obtain the highest dividends, consistent with safety. In this respect, Professor Woodworth admitted that the associations are no more "mutual" than is appellant bank (R. 901a).

^[73]R. 175a, 201a, 208a, 308a, 342-3a, 1052a, 1179a.

^[74]R. 173a, 174a, 208a, 460-1a, 491a, 510a, 1050a.

Law changed in 1935 to eliminate requirement that borrower be an investor in stock.

Act 50 (P.A. of 1887, Michigan) Sec. 8 provided that no borrower could bid for a loan (a) unless he was a stockholder and (b) not "in excess of amount of stock held."

Act 116 (P.A. of 1935, Michigan) amended Sec. 8 of Act 50, eliminating both limitations. A borrower now need not become an investor in shares—he becomes only a "member," with no investment, and no participation in profits or losses, as do investor shareholders.

Compare pp. 68-69 and cases cited in footnote 59, and *Phelps v. Savings and Loan Assn.*, 121 Mich. 343, 354; 80 N.W. 120 and *Building Loan Assn. v. Price*, 169 U.S. 45, 54; 42 L. Ed. 655.

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Modern savings and loan associations employ moneyed capital in the same way modern national banks employ a large and substantial part of their capital.

The modern savings and loan associations in recent years do no more to encourage thrift or home ownership than do national banks.

The modern national banks (including appellant), through their savings departments, as actively encourage thrift by the same general public as do the savings and loan associations; and, through their mortgage departments, as actively promote home ownership by the same general public as do the savings and loan associations.^[75]

Michigan no longer exempts from taxation savings and loan associations or their shares.

The character of Michigan savings and loan associations having changed from 1887 (when they were exempt from taxation) (Act 50 P.A. of 1887; M.S.A. 23.558), Michigan now taxes savings and loan associations and their shares, see *supra*, p. 22. Recognizing that such associations are no longer mutual in character, that investors are interested solely in high return and that borrowers are interested solely in obtaining the best terms—each independent of the other—Congress in 1951 removed the tax-exempt status from these associations, see *supra*, p. 22. The reason for exemption no longer obtains.

The Hoenig case is not in point.

Appellee and the lower court rely upon *Hoenig v. Huntington National Bank*, 59 Fed. (2d) 479, cert. denied, 287 U. S.

^[75]In fact, appellant bank which had a greater volume of F.H.A. and V.A. mortgages, with lower interest rates, longer terms, and smaller down payment, thus helped the cause of home ownership more than savings and loan associations, which were seeking higher returns and faster amortization. (R. 872-4a; 432a; 512-3a; 1152a; see *supra*, p. 12.)

648. However, *Hoenig*, decided by a sharply divided court, is clearly distinguishable.

In 1926-7 (the tax years involved in *Hoenig*), national banks were then prohibited by law from taking a residential mortgage for a term in excess of one year. The record in *Hoenig* shows that only 7/10 of 1% of the plaintiff banks' loaning business in Columbus, Ohio, consisted of real estate mortgage loans, and even that minute percentage was for one year or less, compared to the savings and loan associations' mortgages of 10 to 12½ years. Every banker in that case was obliged to admit on cross-examination that:

"We have no direct loans on homes" (Archer);

"We do not fill that demand" (Huntington);

"As a rule we do not cater to them" (Stein).

(See Appendix C, *infra*.)

With respect to the 10 to 12½ year loans made by the associations, the Court of Appeals in *Hoenig* held that national banks **"do not and . . . should not invest their funds generally in this manner"** (59 F. 2d 482).

In contrast, in the instant case, about 40% of appellant bank's entire loan business are residential mortgage loans with substantially the same terms as those of the associations.^[76] See chart comparing competition in the case at bar with *Hoenig*, Appendix C.

Hoenig was properly decided on its facts, and certiorari was properly denied for the same reason which the Court recognized in *Shreveport*, *supra*, i.e. **lack of factual competition**.

^[76] Commencing in 1934 Congress by a series of statutes further extensively and substantially broadened the powers of national banks to loan on residential mortgages, so that in 1952 and today, there is practical identity in the power of national banks and savings and loan associations to engage in the business of mortgage loans. (For a history and description of this legislation broadening the power of national banks in the mortgage loan field, see *supra*, pp. 18-20.)

In *Hoenig* the court also found, as a fact, that the associations were like those described in *Mercantile National Bank v. Hubbard*, *supra*, saying (59 Fed. (2d) 482):

"The chief purpose of these institutions is still 'to encourage the building of small houses by poor people, and the saving from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house.' *Mercantile National Bank v. Hubbard*, *supra*..."

and recognized that savings and loan associations were "created in answer to a need which the banks could not and did not satisfy..." (482).

Contrary to *Hoenig*, the facts in the case at bar, undisputedly show that the savings and loan associations of 1952 and today are not institutions of "poor people . . . saving week by week . . . to pay mortgage debts"—serving "a need which banks could not and did not satisfy." Today, these institutions deal with the general public, **operate commercially for profit**, are in sharp competition with the business of national banks, *supra*, pp. 9-17.

The ascendant growth of savings and loan associations and dominant position in residential mortgage business.

Savings and loan associations have enjoyed an astonishing growth.^[77] Today, they are large, powerful financial institu-

^[77]Norman Strunk, executive vice-president of the United States Savings and Loan League, at the Annual Conference of the American Savings and Loan Institute at Chicago in March, 1960, predicted that by 1970 the assets of the business would be approximately \$165 billion as compared to \$65 billion at present, that savings and loan associations would be doing 55 per cent of all home financing as compared to 40 per cent today, and that several associations would be billion dollar institutions.

Moreover, Mr. Strunk in a forewarning to banks stated that "bank stockholders would be better served if the banks were to stop trying to attract savings deposits..."

tions which should in all fairness bear their equal share of taxation and cost of government.

To illustrate their present size and strength, more than one (1) out of every three (3) mortgages on every class of residential real estate made in Michigan and in the United States in 1952 was made by such associations, and this ratio has steadily increased to over 40% at the present time.

The associations' growth picture has been spectacular. In 1900, all associations in the United States had total assets of only \$571,367,000 (Exhibit 221, R. 1284a). By 1952, their assets had grown to \$19,200,000,000. In 1900, total assets of all Michigan associations equalled only \$10,118,000. By 1952, total assets had increased to \$537,695,000 (Exhibit 221, R. 1284a), which figure almost equalled the total assets of all associations in the United States in 1900. At the end of 1959, the size of these financial institutions had reached the startling figure of \$63,472,000,000 in the United States, and \$1,679,000,000 in Michigan.

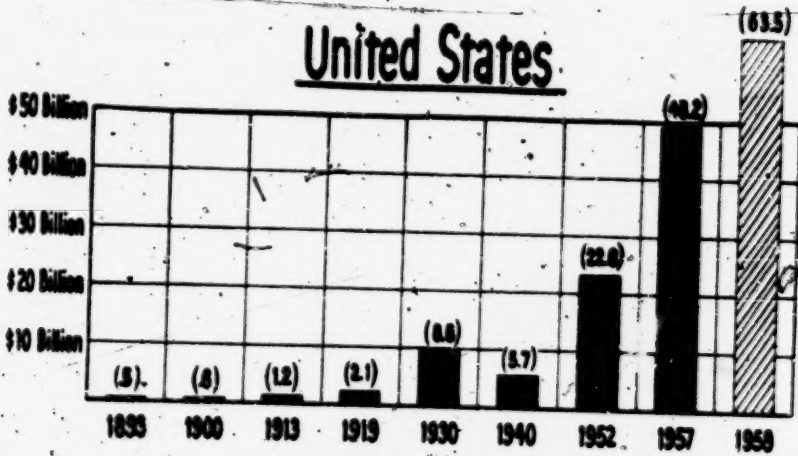
Savings and loan associations with share capital in excess of \$100,000,000 are not uncommon; in 1959, there were 71 such associations in the United States. There were 10 associations having share capital in excess of \$300,000,000. See Table 52, Savings and Loan Fact Book, 1960, p. 74: Source Federal Home Loan Bank Board.

In 1922 the average total assets of savings and loan associations was \$330,000 in 1952:—\$3,200,000 in 1956;—\$6,900,000 (Exhibit 14; R. 972a):—\$10,100,000 in 1959 (Fact Book, 1960, p. 74).

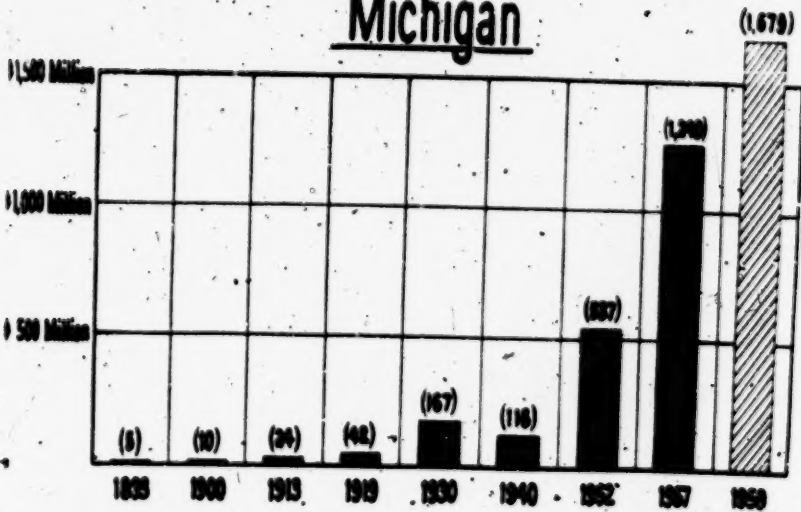
The growth of savings and loan associations—particularly since 1940—is illustrated by the following chart.

Growth of Savings & Loan Associations Assets

United States



Michigan



(Exhibit 221)

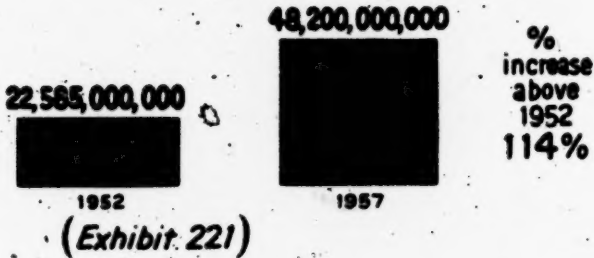
The shaded 1959 figures are not in Ex. 221, but appear in the monthly report of Federal Home Loan Bank Board.

Moreover, the growth of savings and loan associations in the United States from 1952 to 1957 (114%) has outstripped the growth of national banks (3%) during the same period. Stated in another way, the asset growth of savings and loan associations during that period was approximately \$25,600,000,000, as compared with the increase in assets of national banks of only about \$3,300,000,000, or about 8 to 1. See following chart.

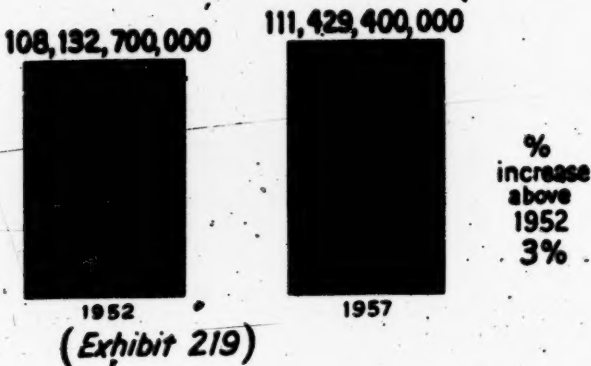
Growth of Savings & Loan Associations Compared to National Banks—United States

— Assets —

All Savings & Loan Associations



All National Banks



The Highest Banking Official of the United States Government, the Comptroller of Currency, fully recognizes and is concerned about the increasing importance of savings and loan associations' competition with banks.

Considering the extent of competition faced by banks, the Comptroller of Currency of the United States recently testified before Congress:^[78]

"... banks are finding themselves more and more in competition with other types of bank and nonbank financial institutions... competing with commercial banks are... Federal and State chartered savings and loan associations..."

Referring to the statement of his Deputy Comptroller:^[79]

"Federal and State-chartered savings and loan associations are zealous and highly effective competitors for the funds of savers and for real estate mortgage loans..."

the Comptroller concluded:

"It is our view that any failure to take into consideration competition from other types of financial institutions when considering the subject of bank competition would indicate serious lack of knowledge of basic factors important to banking today and disregard of the elements that go into a determination of the competitive situation in which commercial banks function."

^[78]Hearings before Subcommittee No. 2 of the Committee on Banking and Currency, House of Representatives, Eighty-Sixth Congress, Second Session, on S. 1062—February 16, 17, and 18, 1960, p. 7.

^[79]The Comptroller placed into the record an address of L. A. Jennings, Deputy Comptroller of Currency, of May 27, 1959, on the subject of "Competition in Commercial Banking," (see also Congressional Record of June 18, 1959).

The serious effect of discrimination against national bank shares.

This Court has consistently held that R. S. 5219 demands equality of taxation and "that every clear discrimination against national bank shares [as has been demonstrated here] . . . is a violation of both the letter and spirit of the restriction." *Anderson, supra*, 269 U.S. at p. 248.

The adverse effect of such a discrimination upon the business of national banks and their shares is obvious and is implicit in the statute. As was said in *Mercantile, supra*: "A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden." (121 U. S. 138, 155.)

The more a taxing authority prefers savings and loan associations, the greater the margin of profit they enjoy over national banks in the competing area of residential mortgages. This alone is seriously detrimental to national banks and their shareholders.

Furthermore, the more profit advantage the associations thus enjoy, the greater dividends they are enabled to pay to their shareholders. As a result, they have successfully attracted increasingly greater investments of surplus funds, which might otherwise have been invested in national bank shares or deposited with national banks^[80] for its use in the

[80] Savings deposits constitute the "life blood" of thousands of individual commercial banks. Indeed, at mid-1959 there were 3,185 insured commercial banks holding savings deposits varying from 50 to 100 percent of their total deposits. Another 4,888 insured commercial banks had from 30 to 50 per cent of total deposits in savings and time deposits. In other words, over 8,000 insured commercial banks, or more than three-fifths of the total number

mortgage business. With these increasing amounts of moneyed capital (favored taxwise) thus obtained, the associations have had increasing resources to use in the competing residential mortgage loan business, while the national banks—competing at a disadvantage in the mortgage loan business—also lose in resources which they could employ in the residential mortgage business and lose in earnings, which adversely affect the value of their shares.

There is no just cause for a state to "partially exempt"—prefer taxwise—moneyed capital invested in shares of savings and loan associations.

To favor savings and loan associations and their shareholders taxwise in the light of their ascendant growth and dominant position in the residential mortgage loan business is indefensible under R. S. 5219. No longer a small, poor man's institution with limited resources—but huge, powerful organizations aggressively competing for profit with important segments of the business of national banks—there is no just or valid reason why they should be exempted or favored.

R. S. 5219 does not prevent the states from taxing shares of national banks. It only provides that if such shares be taxed by the state, the tax must be on a basis of equality with other competing moneyed capital. The state does not suffer by this requirement. In the instant case, the state revenues would be increased if the present tax rate on national bank shares were maintained and the moneyed capital invested in associations were similarly treated—in which event, at least

(Continued from page 84)

are particularly dependent upon savings deposits for continued successful operation. Further, the large majority of these banks are of small size, with about 6,500 holding less than \$10 million in total deposits. See Federal Deposit Insurance Corporation Annual Report 1959, Table 19, p. 50.

6 million dollars more taxes each year would be paid to the State of Michigan—which now escape.

Historical labels—no longer apposite in modern day society and economy—certainly should not determine basic principles. Statements about associations of a different era should not be blindly applied under the completely different economic facts of today. An 1890 association is not a 1952 association.

As the late Justice Cardozo said in his treatise, "Nature of the Judicial Process" (page 81) :

"Courts know today that statutes are to be viewed, not in isolation or *in vacua* * * * but in the setting and the framework of present-day conditions * * *"[¹⁸¹]

Tax equality is the injunction of R. S. 5219. Under the compelling facts in this case we submit that this Court should not permit the statutory safeguard against discrimination to be undermined or whittled away.

Continued tax discrimination against shares of national banks must inevitably result in a weakening and corrosion of the structure and operation of the national banking system.

[¹⁸¹]Citing: *Muller v. Oregon*, 208 U. S. 412; Pound, "Courts and Legislation," 9 Modern Legal Philosophy Series, p. 225; Pound, "Scope and Progress of Sociological Jurisprudence," 25 Harvard L. R. 513; cf. Brandeis, J., in *Adams v. Tanner*, 244 U. S. 590 [616]. See also *Holden v. Hardy*, 169 U. S. 366, 387.

See Oliver Wendell Holmes, "Collected Legal Papers," p. 187.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the Supreme Court of Michigan should be reversed, and that such Court be directed to enter judgment for appellant.

Respectfully submitted,

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Victor W. Klein

Philip T. Van Zile, II,

Harold A. Ruemenapp,

Attorneys for Appellant

MICHIGAN NATIONAL BANK

November 18, 1960

APPENDIX A

(R. S. 5219)

United States Code, Title 12
NATIONAL BANK SHARES

§548. State taxation.

The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with;

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corpora-

tions doing business within its limits: Provided, however, That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the state on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations:

(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

2. The shares of any national banking association owned by nonresidents of any State shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

4. The provisions of section 521^c of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section. (R.S. § 5219; Mar. 4, 1923, ch. 267, 42 Stat. 1499; Mar. 25, 1926, ch. 88, 44 Stat. 223.)

APPENDIX B

Act No. 9, Public Acts of 1953

An act to amend section 2a of Act No. 301 of the Public Acts of 1939, entitled as amended "An act to provide for the imposition and the collection of a specific tax upon the privilege of ownership of intangible personal property; to provide for the disposition of the proceeds thereof; to prescribe the powers and duties of the department of revenue with respect thereto; to prescribe penalties; to make an appropriation to carry out the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act," as added by Act No. 182 of the Public Acts of 1952, being section 205.132a of the Compiled Laws of 1948.

The People of the State of Michigan enact:

Section amended.

Section 1. Section 2a of Act No. 301 of the Public Acts of 1939, as added by Act No. 182 of the Public Acts of 1952, being section 205.132a of the Compiled Laws of 1948, is hereby amended to read as follows:

205.132a. Intangibles tax; stock of banks and trust companies; capital account definition; date of payment of tax. [M.S.A. 7.556 (2a)].

Sec. 2a. For the calendar year 1952, in lieu of the tax imposed by this section prior to this amendatory act, and for each year thereafter, or a portion thereof, there is hereby levied upon each resident or nonresident owner of shares of stock of national banking associations located in this state and banks and trust companies organized under the laws of this state, and there shall be collected from each such owner an annual specific tax on the privilege of ownership of each such share of stock, whether or not it is income producing, equal in the case of a share of common stock to $5\frac{1}{2}$ mills upon each dollar of the capital account of such association, bank or

trust company represented by such share, and equal in the case of a share of preferred stock to $5\frac{1}{2}$ mills upon the par value of such share. "Capital account" as referred to herein shall be determined by adding the common capital, surplus and undivided profits accounts exactly as they appear on the report as of the latest date during the year for which the tax is imposed prepared by such association, bank or trust company for the public authority having general regulatory supervision over it, and the dollar amount of the capital account represented by each share of its common stock shall be determined by dividing such capital account by the number of shares of such common stock outstanding at the date of such report. The tax on such shares of stock levied under this section shall be the only tax levied with respect to shares of such associations, banks or trust companies.

The tax imposed by the provisions of this section 2a for the calendar year 1952 shall be due and payable on or before 45 days after the effective date of this section 2a and that so imposed for each year thereafter shall be due and payable as provided for in section 4 of this act.

Notwithstanding anything to the contrary contained in any other provision of this act, the amount of all taxes paid by any such association, bank or trust company on behalf of its shareholders for the calendar year 1952 in accordance with any provision or provisions of this act in effect prior to the effective date of this section 2a shall be credited as a payment against the tax imposed on the shares of such association, bank or trust company for the calendar year 1952 under this section 2a.

This act is ordered to take immediate effect.

Approved March 25, 1953.

APPENDIX C

Hoenig Extracts

Testimony of Bankers on Cross-Examination.

Cross-examination of Baldwin Gwinn Huntington (Vice-President of Huntington National Bank), p. 240:

"It is true, surely, that there is a great demand for long time loans. **We do not fill that demand, and are not permitted to fill that demand;** but the fact that there is some one who does not make them any the less in competition to us. We can not take a twelve year mortgage on real estate in Columbus. Even if we took a real estate mortgage for one year under the Federal Reserve Act, Section 24, we would be limited to sixty per cent on mortgages."

Cross-examination of Frank L. Stein (President, Ohio National Bank), p. 251:

"It is true that the Ohio National Bank does not make a practice of giving a ten year mortgage direct to a person who comes in and says, 'I want to buy a home and want to pay for it on the monthly payment plan, the way I can get it of the building and loan.' **It is true that on June 30, 1926, we did not have any loans of that kind except for debts that had been previously contracted.** If a prospective borrower should come into the Ohio National Bank owning a \$10,000 piece of property in Columbus as of June 30, 1926, and should say, 'I want to borrow \$5,000 on my \$10,000 piece of property. I will execute a note payable to the Ohio National Bank at the rate of one dollar per hundred per month, which would make the loan extend for a period of twelve years and nine months.' Whether or not the bank would accept such a loan as that would depend upon the party making the application. **As a rule, we do not cater to them. As of June 30, 1926, we could not legally have made such a loan, and such a loan as that would not normally be a popular loan for a bank.** I know there is a large demand

in Columbus for loans of that character. It is a fact of common knowledge that the average purchaser of a house, in rather moderate circumstances, buys his home on that basis."

Cross examination of George A. Archer (President of Commercial National Bank), pp. 218, 220:

"We make loans on real estate in our bank, but we have not gone into the real estate work to any extent.
* * *

"We have very few direct to the bank mortgages. These are very small. I think the largest is about \$30,000.
* * *

"When I stated on direct examination that the largest real estate loan we had was thirty thousand dollars, I had in mind a loan on a four-story building of brick on South High Street. This loan was taken to secure a debt, and was not originally made as a mortgage loan. When I looked at the papers, I found that we have one larger than that—\$75,000 on business property up in the north end. This was a direct loan. **We have no direct loans on homes.**"

"Hoenig" Facts

Total Loans of all National Banks in Columbus, Ohio Including Plaintiff's	Total Loans of all Building and loan associations in Columbus, Ohio
\$56,133,000 (Hoenig record, p. 36)	\$90,544,234 (Hoenig record, p. 38)
Total Residential Mortgage Loans	Total Residential Mortgage Loans
\$399,000 (Hoenig record, p. 36)	\$89,797,515 (Hoenig record, pp. 38, 39)
Average Term of Residential Mortgage Loans	Average Term of Residential Mortgage Loans
1 year maximum term (12 U.S.C. 371) No testimony as to average term	10½ to 12½ yrs. (Hoenig record, p. 39)
% of Residential Mortgage Loans to Total Loans	
7/10 of 1%	

Facts in This Cause

Total Loans of Plaintiff Bank in 7 Cities	Total Loans of all savings and loan associations in 7 Cities
\$148,304,387 (Exh. 3)	\$97,584,865 (Appellant's Jurisdictional Statement, p. 13)
Total Residential Mortgage Loans	Total Residential Mortgage Loans
\$59,737,315 (Exh. 3) (Including \$8,317,457 home improvement loans.)	\$97,584,865* (Appellant's Brief, p. 17)
Average Term of Residential Mortgage Loans	Average Term of Residential Mortgage Loans
Conventional—10 yrs. FHA { 20-25 yrs. VA { (Appellant's Brief, pp. 12-14)	Conv.—11-12 yrs. FHA { 20-25 yrs. VA { (Appellant's Brief, pp. 12-14)
% of Residential Mortgage Loans to Total Loans	
40%	

*Virtually all loans were secured by residential real estate, although some commercial loans were made.

MOTION FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST
NATIONAL BANK (THREE RIVERS, MICHIGAN),
COMMERCIAL NATIONAL BANK OF
IRON MOUNTAIN, THE NATIONAL BANK OF
JACKSON, and THE FIRST NATIONAL BANK
AND TRUST COMPANY OF KALAMAZOO, bank-
ing associations organized under the laws of the
United States,

Intervenors-Respondents.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and
LOUIS M. NIMS, STATE COMMISSIONER OF
REVENUE,

Appellees.

*On Appeal from the Supreme Court of the
State of Michigan.*

**MOTION OF THE FRANKLIN NATIONAL BANK OF
LONG ISLAND FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE AND BRIEF AS AMICUS CURIAE**

Howard Hilton STEELMAN,

*Attorney for The Franklin National Bank
of Long Island, Appellant.*

230 Broadway,
New York 6, New York.

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IN THE
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OCTOBER TERM 1960

No. 155

MICHIGAN NATIONAL BANK, a bankit association organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN), COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Appellees.

*On Appeal from the Supreme Court of the
State of Michigan*

**MOTION OF THE FRANKLIN NATIONAL BANK OF
LONG ISLAND FOR LEAVE TO FILE BRIEF
AS AMICUS CURIAE**

THE FRANKLIN NATIONAL BANK OF LONG ISLAND, a national banking association, operating in the State of New York, respectfully moves this Court for leave to file the

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accompanying brief in this case as *amicus curiae*. The consent of the appellant herein has been obtained to the filing of a brief as *amicus curiae* by the applicant, but appellees herein have refused to consent.

The applicant, The Franklin National Bank of Long Island, has an interest in this case in that:

(a) It has now pending (as plaintiff) in the Supreme Court of the State of New York an action for a declaratory judgment, entitled *The Franklin National Bank of Long Island v. G. Russell Clark as Superintendent of Banks of the State of New York and others* (New York County Clerk's Index No. 9734/1960), in which two of the questions importantly involved are closely related to a main question presented for decision in the instant case. They are: first, whether, *as a matter of law*, a savings and loan association or similar banking institution, no matter how great the extent of its employment of capital in competition with a national banking association, must, nevertheless, be deemed not a similar institution and thereby become immune from burdens statutorily imposed on national banking associations; and, second, whether the Court, because *as a matter of law* it assumes similarity (or dissimilarity), may refuse to receive evidence as to the factual identity or non-identity of the operations of competing banking institutions.

(b) In the State of New York, taxes against national banking associations, such as applicant, are levied on a basis different from those levied against savings and loan associations, with the result that a discriminatory tax could be levied upon applicant's shares if this Court should determine that, *as a*

matter of law, irrespective of the *fact* of competition, savings and loan associations are not in competition with national banking associations.

(c) The determination in the instant case that, as a *general* proposition, as a *matter of law*, a savings and loan association may not be deemed in competition with a national banking association, could have disastrous repercussions against applicant and others similarly situated.

In the case now at bar, appellant has ably presented the reasons, based upon the record facts, why it should have judgment. Applicant fully supports the arguments and position of appellant (and the intervening plaintiffs).

Appellant, in the courts below, has briefed and argued the effect of changing economic conditions; but the Court of Claims and the Supreme Court of Michigan appear to have rested their conclusions upon *generalities* extracted from statements made in decisions of an earlier era. Although the opinions, below, made formal obeisance to the existence of specific economic facts in the record, they utilized these facts mainly for the purpose of determining the nature of the tax imposed. Their final conclusions in all other respects appear to have emerged "on the ground of public policy . . . grounded in history and on precedent." (Cf., Conclusions numbered 1 and 2 in the opinion of the Court of Claims; Appendix A of Jurisdictional Statement, p. 41b). Neither appellant nor appellee, below, have discussed, nor have the courts, below, considered that the approach there taken is contrary to the trend of modern decisional processes. Since the parties may also omit reference to this subject in this Court, it is believed that the attached brief, which applicant is requesting permission to file as *amicus curiae*,

will serve to throw additional light upon, and act as an appropriate additional argument on the question to be decided. If this argument is accepted, it will be dispositive of the case now at bar.

Respectfully submitted,

HOWARD HILTON SPELLMAN,
Attorney for The Franklin National Bank
of Long Island, Applicant,

39 Broadway,
New York 6, New York.

November 17, 1960

IN THE
Supreme Court of the United States

OCTOBER TERM 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN), COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Appellees.

*On appeal from the Supreme Court of the
State of Michigan*

**BRIEF OF THE FRANKLIN NATIONAL BANK
OF LONG ISLAND AS AMICUS CURIAE**

Interest of Amicus Curiae

The Franklin National Bank of Long Island is a national banking association, with its principal place of business in Mineola, Nassau County, New York, operating branches in Nassau and Suffolk Counties, New York.

1. There is now pending in the Supreme Court of the State of New York an action for a declaratory judgment entitled *The Franklin National Bank of Long Island v. G. Russell Clark, Superintendent of Banks of the State of New York, et al.*, (New York County Clerk's index number 9734/1960), wherein the present *amicus curiae*, as plaintiff, seeks a declaratory judgment against the Superintendent of Banks of the State of New York, two commercial banks with principal offices in New York City and eight savings banks with principal offices in New York City to the effect that a recent statute of New York, colloquially known as the New York Omnibus Banking Law of 1960 is unconstitutional upon the grounds, among others, that it deprives plaintiff of due process of law and the equal protection of the laws. Two of the questions importantly involved in that litigation are closely related to a main question presented for a decision in the instant case. They are: first, whether, *as a matter of law*, a savings and loan association or similar banking institution, no matter how great the extent of its employment of capital in competition with a national banking association, must, nevertheless, be deemed not a similar institution and thereby become immune from burdens statutorily imposed on national banking associations located in New York; and, second, whether the Court, because *as a matter of law* it assumes similarity (or dissimilarity), may refuse to receive evidence as to the factual identity or non-identity of the operations of competing banking institutions.

2. In the State of New York, taxes against national banking associations, such as applicant, are levied on a basis different from those levied against savings and loan associations (*New York Tax Law*, Arts. 9-B and 9-C), with the result that a discriminatory tax could be levied upon applicant's shares if this Court should determine that, *as a matter of law*, irrespective of the *fact* of competition, savings and loan associations are not in competition with national banking associations.

3. The determination in the instant case that, as a general proposition, *as a matter of law*, a savings and loan association may not be deemed in competition with a national banking association, could have disastrous repercussions against applicant and others similarly situated. If there is foreclosed from *factual* determination the question whether a savings and loan association or similar institution (or is not) in competition with a national banking association, statutory classifications, whose constitutional validity must rest upon the fact of competition (or non-competition), could be imposed at the will of a legislature and thus deprive national banking associations of valuable rights. Such an imposition of burdens upon an assumption of non-competition is one of the important points at issue in the litigation mentioned in subdivision 1, above. Unless this Court rejects the assumption of the Michigan courts, in the instant case, that the question of competition is to be resolved *as a matter of law* based upon earlier precedents, the rights of The Franklin National Bank of Long Island may be seriously impaired and its ability to litigate the question on a *factual* basis may be deemed prevented and its ability to compete on a fair basis with savings and loan associations and similar institutions would be substantially impaired or even destroyed.

Summary of Argument

The Michigan courts erred in determining, *as a matter of law*, that earlier precedents require a holding that savings and loan associations are not in competition with national banks. Such a holding is a departure from modern decisional processes and can have devastating effects upon the rights of national banking associations, not only in matters involving taxation but in all other fields of activity, where the States attempt to enforce restrictive legislation, based on the alleged constitutional power of classification.

ARGUMENT.

I

The Reasons Assigned By The Courts, Below, In Ruling As A Matter Of Law That Savings And Loan Associations Are Not In Competition With National Banks, Are A Retrogressive Departure From Modern Judicial Decisional Processes.

The courts, below, have ruled that, *as a matter of law*, savings and loan associations in Michigan are not in substantial competition with appellant and other national banking associations. Examination of the opinions, below, shows that they are based upon the proposition that a number of precedents have established, beyond present recall, the differences in nature between savings and loan associations and national banks. Because of these precedents (many of them quite ancient), the Michigan courts have apparently felt themselves constrained to apply *as a rule of law*, the concept that "Michigan building and loan associations operated in a narrow, restricted field, are

markedly different in character, purpose and organization from national banks, and are not in 'substantial competition' with national banks." *Michigan National Bank v. State of Michigan, et al.* [the instant case], 358 Mich. 611, 639). Although the Michigan Supreme Court stated (*ibid.*) that its conclusion was reached because "[t]he record in this appeal discloses" the foregoing as a matter of fact, *nothing* in the record so indicates and the entire opinion demonstrates that it is based *completely* upon earlier cases, decided in a remote era (see, *e. g.* 358 Mich. at p. 623, *et seq.*). The opinion of the Michigan Court of Claims frankly stated that its conclusions were based on holdings of the courts since 1887 to the effect that a state could exempt from taxation or prefer "on the ground of public policy mutual savings bank and other like institutions" and that the power of the state to make such exemptions "on the ground of public policy is an important one, grounded in history and on precedent." The Supreme Court of Michigan, quoting the foregoing matter, stated that this was the basis upon which the Court of Claims "justified its finding of no cause of action." (358 Mich. at pp. 619-620).

Thus, the position of the courts, below, is that precedent, expressed in *generalities* culled from earlier decisions, justified "partial exemption" from taxation and that this precedent is sufficiently immutable to insulate savings and loan associations from the onerous tax burdens imposed on national banking associations, leaving no recourse to national banks to protect themselves through court action.

It is submitted that the underlying error, here, is *not* the application of a precedent to a state of facts, but the failure to recognize that the *precedent, itself requires mutation or abandonment* by reason of a new fact situation in the economic field, which the record demonstrates beyond peradventure of doubt.

This error is a departure from all modern judicial decisional processes. To sustain the Constitution as a living document, this Court, by the modern trend of its decisions, has refused to regard the generalities of past precedents as a *final* statement of the law, where intervening economic and social factors have required reexamination of the premise upon which such precedents were originally based.

Tigner v. Texas, 310 U. S. 141, is in point. There, this Court had under consideration a provision of a Texas anti-trust law, under which the defendant had been indicted, charged with participation in a conspiracy to fix the retail price of beer, and his indictment had been sustained by the Texas Court of Criminal Appeals. The defendant claimed that the statute was unconstitutional, because, by its terms, it did not "apply to agricultural products or live stock in the hands of the producer or raiser" (*Texas Penal Code*, title 19, ch. 3, Art. 1642). Forty years earlier this Court had held a practically identical statute unconstitutional as offensive to the safeguards afforded by the equal protection of the laws provision of the Fourteenth Amendment (*Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540). "If that case controls," said this Court, "appellant contends, the Texas Act cannot survive and he must go free." (310 U. S. at p. 144). The opinion of this Court went on to say:

"The court below recognized that the exemption was identical with that deemed fatal to the Illinois statute involved in *Connolly's Case*. But it felt that time and circumstances had drained that case of vitality, leaving it free to treat the exemption as an exercise of legislative discretion. . . . Dealing as we are with an appeal to the Constitution, the *Connolly Case* ought not to foreclose us from considering this exemption in its own setting." (*Ibid.*)

The opinion of this Court (310 U. S. at pp. 145-147) then considered changes in the treatment of the differences between agriculture and industry "[s]ince Connolly's Case was decided, nearly forty years ago," held that the statute in the light of modern economic situations was constitutional and sustained the indictment. The opinion demonstrated the economic necessity for the abandonment of the prior rule of law in the following language:

"The Fourteenth Amendment enjoins 'the equal protection of the laws,' and laws are not abstract propositions. They do not relate to abstract units A, B and C, but are expressions of policy arising out of specific difficulties, addressed to the attainment of specific ends by the use of specific remedies. The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same. And so we conclude that to write into law the differences between agriculture and other economic pursuits was within the power of the Texas legislature. Connolly's Case *has been worn away by the erosion of time*, and we are of opinion that it is no longer controlling." (310 U.S. at p. 147, emphasis supplied).

In the case now at bar, there is ample and uncontradicted proof that earlier doctrines have been worn away by the erosion of time. No longer are savings and loan associations—small aggregations of poor people banded together for mutual help. No longer are national banks refused permission to make mortgage loans, thus keeping them factually out of competition with savings and loan associations. The *factual situation* is that savings and loan associations are highly competitive with national banks and that they employ a substantial part of their funds in such

competition.* Thus, the very factors that underly the decisions of the Michigan courts, herein, have ceased to exist as a matter of fact. No decision of this Court has held that they must be deemed to have a continued existence as a matter of law.

Brown v. Board of Education, 347 U. S. 483, furnishes an excellent example of the modern trend of the judicial decisional process. This Court there had under consideration the power of a State, either by statute or a State constitutional provision, to provide for segregation of negro and white children in public schools. For many years (since 1896) the leading case on the subject of segregation was *Plessy v. Ferguson*, 163 U. S. 537, which had held that it was not a violation of the Fourteenth Amendment to separate the races, provided the accommodations for each race were substantially equal. This was the so-called "separate but equal" doctrine.

In the *Brown* case, this Court stated that the question was "directly presented" whether, despite equalization of facilities for difference races, segregation was constitutionally permissible upon the doctrine ["separate but equal"] of the *Plessy* case. This Court significantly stated:

"In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws." (347 U. S. at pp. 492-493).

* An example of competition as a matter of fact is afforded by a New York statute, which empowers savings and loan associations to rent to its members safe deposit boxes for the keeping of securities, jewelry and valuable papers. (New York Banking Law, § 383-a.).

Later in its opinion, this Court added; when concluding that there is a detrimental psychological effect of segregation upon negro children, that "[w]hatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected."

Here, we have the modern, realistic approach to ancient rules of law. The emphasis is *not* upon the application of a fixed doctrine to the state of facts shown by a record, but rather upon determination whether the doctrine, itself, should be abandoned or changed in the light of modern *factual* conditions and knowledge. The opinions, below, in the instant case, are a retrogressive departure from this modern decisional approach.

CONCLUSION

The judgment, below, should be reversed.

Respectfully submitted,

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LE COPY

FILED Nov. 26, 1960
IN THE

Office Supreme Court

FILED

NOV 26 1960

JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (Three Rivers, Michigan),
COMMERCIAL NATIONAL BANK OF IRON
MOUNTAIN,

THE NATIONAL BANK OF JACKSON, and
THE FIRST NATIONAL BANK AND TRUST COMPANY
OF KALAMAZOO,

banking associations organized under the laws of the
United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and

LOUIS M. NIMS, State Commissioner of Revenue,

Appellees

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

MOTION OF SIXTY-EIGHT BANKS IN
MICHIGAN FOR LEAVE TO FILE THE
ATTACHED BRIEF AS AMICI CURIAE
AND BRIEF AMICI CURIAE

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Attorneys for the Applicant
Michigan Banks.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

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organized under the laws of the United States,

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THE FIRST NATIONAL BANK (Three Rivers, Michigan),
COMMERCIAL NATIONAL BANK OF IRON
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Appellees

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

MOTION FOR LEAVE TO FILE A BRIEF
AS AMICI CURIAE

THE NATURE OF THE APPLICANTS' INTEREST

The undersigned moving parties are national and state banks doing business in Michigan and taxed under Act 9 of the Public Acts of Michigan of 1953. Two of them, The Community National Bank of Pontiac and Community National Bank of Ithaca, are in identical positions with the Plaintiff, having paid the 1952 tax under protest and having started suits for recovery, which, however, have been adjourned pending the outcome of this appeal. Those two banks sought unsuccessfully to intervene in this cause. Most of the others have not paid the tax under protest but are deeply concerned over the impact of an adverse decision on their future operations.

The interests of national banks is obvious; that of the state banks, although not so apparent, is equally vital because if the state act in question is held inoperative as to national banks, which it should be, state banks would then be taxed higher than national banks in violation of the Fourteenth Amendment to the Constitution. This was the holding of the Wisconsin Court in *Ashland County Bank v. Village of Butternut*, 208 Wis. 90, 241 N. W. 638. The solution, obviously, is not to eliminate the tax but to abolish the discrimination by taxing the savings and loan associations in like manner as the national and state banks.

THE FACTS WHICH IT IS BELIEVED WILL NOT ADEQUATELY BE PRESENTED

The Michigan Supreme Court in its opinion below, 358 Mich. 611, at 615, quoted from the following excerpt of the trial court's opinion, stating:

"The Michigan Bankers Association (representing both State and national banks) has been permitted to file a brief as *amicus curiae* in which it states the position of its members * * *"

to the effect that, Act 9 of the Public Acts of Michigan of 1953, taxing shares of banks, was "equitable from the viewpoint of competitors * * * has not created any competitive disadvantage among the various institutions * * * is obviously desirable."

The statement by the trial judge that this brief stated the position of the member banks of the Michigan Bankers Association was an unfortunate inference, totally unsupported by the record.

The brief *amicus* of the Michigan Bankers Association only stated the views of the few men making up that organization's tax committee and did not state the position of its member banks, who have had no opportunity to vote or otherwise express their views on the question.

The banks herein represented do not agree with the position stated in that brief, in fact are directly opposed to it, and seek to file their brief herein as their only available means of presenting their actual position to the Court. This position, in substance, is that because Act 9 of the Public Acts of Michigan of 1953 imposes a very substantially higher tax on bank shares than upon moneyed capital invested in savings and loan association shares, it is unlawfully discriminatory in that it gives to savings and loan associations an unfair and unjustified competitive advantage in a vital and substantial part of the banks' lending business, that of residential mortgage loans.

It is submitted that the evidence produced at the trial of this cause completely negates the statement of the

Michigan Bankers' Association's tax committee that the state act in question "has not created any tax competitive disadvantage" and that that statement has no basis whatsoever in the record.

REASON FOR BELIEVING ABOVE FACTS WILL NOT BE PRESENTED BY THE PARTIES

Applicants, through their counsel, have had an opportunity to inspect Appellant's brief and do not find that the accuracy of the quoted statement as to the position of the Michigan banks is discussed therein.

RELEVANCY

It is obvious that the opinion of a group of Michigan Bankers on a constitutional question is not material to a determination of that question and should not be considered by the Court. However, where one of the issues in the cause is the question of competition between savings and loan associations and banks, and the opinion is that the statute "has not created any competitive disadvantage", the suggestion that this opinion is held by the member banks, a suggestion totally unsupported by the record, becomes important. The undersigned member banks emphatically disagree. Their experience demonstrates that the savings and loan associations have become their greatest competition in the residential mortgage loan business.

CONCLUSION

Both parties have been requested to consent to the filing of a brief on behalf of the applicant banks. Appellant has consented thereto, but Appellees have refused consent.

Because of their vital interest in the outcome of this appeal, the applicants respectfully request the right to file their brief *amici curiae* herein.

Respectfully submitted,

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First National Bank, Quincy, Michigan
National Bank of Hastings
Security National Bank of Manistee
The Midland National Bank
National Bank of Eaton Rapids
First National Bank of East Lansing
First National Bank of Mt. Clemens
National Bank of Richmond
First National Bank of Niles
First National Bank, Sturgis, Michigan
First National Bank, Cassopolis, Michigan
Hillsdale County National Bank
St. Clair Shores National Bank
National Bank of Jackson
Community National Bank of Ithaca
First National Bank of Kalamazoo
First National Bank of Three Rivers
National Bank of Wyandotte
Community State Bank, St. Charles, Michigan
Lapeer Savings Bank

(List of Banks concluded on next page).

Farmers & Merchants State Bank,
 Merrill, Michigan
 Commercial Savings Bank, St. Louis, Michigan
 Woodruff State Bank, DeWitt, Michigan
 Loan and Deposit State Bank,
 Grand Ledge, Michigan
 Peoples State Bank, Williamston, Michigan
 The Farmers Bank of Mason
 Isabella County State Bank, Mt. Pleasant, Michigan
 Peoples State Bank of Caro, Michigan
 Saginaw Valley Bank
 Capac State Savings Bank
 Howard City State Bank
 The Morley State Bank
 First State Bank of Greenville
 Wyoming State Bank, Wyoming Township,
 c/o Grand Rapids, Michigan
 Moline State Bank
 Calhoun State Bank, Homer, Michigan
 Delton State Bank
 The Grosvenor Savings Bank, Jonesville, Michigan
 Hillsdale State Savings Bank
 The Olivet State Bank
 Springport State Savings Bank
 Wayne Oakland Bank, Royal Oak, Michigan
 Clarkston State Bank
 State Bank of Perry
 Bank of Albion
 Peoples State Bank of Bronson
 Peoples State Bank of St. Joseph
 Cass County State Bank, Cassopolis, Michigan
 Benton Harbor State Bank
 Union State Bank, Buchanan, Michigan
 Industrial State Bank, Kalamazoo, Michigan
 Newport State Bank
 The Michigan Bank, Detroit, Michigan
 Coopersville State Bank
 River Rouge Savings Bank
 Hemlock State Bank
 State Bank of St. Johns
 State Savings Bank, Clinton, Michigan
 Citizens State Savings Bank of New Baltimore
 Mt. Clemens Savings Bank
 Macomb County Savings Bank, Richmond, Michigan
 Citizens Bank of Saline
 Saline Savings Bank
 United Savings Bank of Tecumseh
 Milan State Bank
 Farmers State Bank of Concord

BRIEF AMICI CURIAE OF BANKS OPERATING IN MICHIGAN

The undersigned banking associations operating in the State of Michigan have a real concern about the outcome of the appeal in this cause because of the serious impact it may have upon their future operations.

It is their position that savings and loan associations are their most vigorous competitors in the business of making residential mortgage loans, which is a most vital and important part of the lending business of the undersigned banks.

The suggestion to the contrary, an inference drawn by the Trial Court from the mere fact of the filing of the brief of Michigan Bankers Association, a brief which did not state that the position taken was that of its member banks, was not record supported and in fact not true. The views expressed in that brief were those of the Association's tax committee and certainly were not those of the undersigned banks.

This brief is submitted in support of the position of the Appellant that Act 9 of the Public Acts of Michigan of 1953, which imposes a tax on bank shares eight to thirteen times greater than that imposed upon moneyed capital invested in savings and loan associations, is discriminatory, highly inequitable and has created a great and unwarranted competitive advantage to the savings and loan associations in Michigan.

CONCLUSION

To safeguard the interests of banks in the State of Michigan, we respectfully submit that this Court should uphold the position of the Appellant in the above cause and reverse the judgment of the Michigan Supreme Court.

Respectfully submitted,

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Security National Bank of Manistee
The Midland National Bank
National Bank of Eaton Rapids
First National Bank of East Lansing
First National Bank of Mt. Clemens
National Bank of Richmond
First National Bank of Niles
First National Bank, Sturgis, Michigan
First National Bank, Cassopolis, Michigan
Hillsdale County National Bank
St. Clair Shores National Bank
• National Bank of Jackson
Community National Bank of Ithaca
First National Bank of Kalamazoo
First National Bank of Three Rivers
National Bank of Wyandotte
Community State Bank, St. Charles, Michigan
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(List of Banks concluded on next page)

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 Citizens Bank of Saline
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 Milan State Bank
 Farmers State Bank of Concord

MOTION FILED NOV 28 1960

IN THE

Supreme Court of the United States

NO. 155 OCTOBER TERM, 1960

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States, Appellant, NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (Three Rivers, Michigan), COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States, Intervening Plaintiffs,

v.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, State Commissioner of Revenue, Appellees.

On Appeal from the Supreme Court of the State of Michigan

MOTION OF FOURTEEN NATIONAL BANKS IN PENNSYLVANIA FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE AND BRIEF

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**MOTION OF FOURTEEN NATIONAL BANKS IN
PENNSYLVANIA FOR LEAVE TO FILE
A BRIEF AS AMICI CURIAE**

Pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States, Mellon National Bank and Trust Company, The Philadelphia National Bank, Pittsburgh National Bank, Central-Penn National Bank of Philadelphia, Western Pennsylvania National Bank, The Union National Bank of Pittsburgh, The First National Bank of Erie, First National Bank and Trust Company of Waynesburg, The Bradford National Bank, The First National Bank of Altoona, North-Eastern Pennsylvania National Bank and Trust Company, Easton National Bank and Trust Company, The National Bank of Boyertown and The Conestoga National Bank of Lancaster ("Pennsylvania Banks") respectfully move for leave to file as amici curiae a brief in the above entitled case and, in support of such Motion, make the following statement:

1. The above entitled case, (the "Michigan Case"), involves the legality under R. S. 5219 (12 U.S.C. 548) of a tax on national bank shares imposed by the State of Michigan for the year 1952.

2. The Pennsylvania Banks are national banks in Pennsylvania and are plaintiffs, on behalf of themselves and all national banks in Pennsylvania, in a suit in equity against Charles M. Dougherty, Secretary of Revenue of Pennsylvania, pending and at issue in the Court of Common Pleas of Dauphin County, Pennsylvania, at Equity No. 2395, No. 25, Commonwealth Docket, 1960 (the "Pennsylvania Case"). In the Pennsylvania Case, the Pennsylvania Banks seek to restrain, as violative of R. S. 5219, the assessment and collection of a tax of 8 mills on the shares of national banks in Pennsylvania (the "Pennsylvania bank shares tax"), as provided by the Penn-

Motion to File a Brief as Amici Curiae.

sylvania Act of July 15, 1897, P. L. 292, as most recently amended by Act No. 476 of the 1959 General Assembly of Pennsylvania (Pa. Stat. Ann. Tit. 72, § 1931, (1949) Pkt. Part 1959). The 1959 amendment increased the rate of tax from 4 mills to 8 mills for the years 1959 and 1960.

3. The Complaint in the Pennsylvania Case alleges that the Pennsylvania bank shares tax violates R. S. 5219 as to national banks because it imposes a tax at a greater rate than is assessed upon other moneyed capital coming into competition with the business of national banks. The Complaint in the Pennsylvania Case alleges that moneyed capital in the hands of individual citizens of Pennsylvania is employed in substantial competition with the business of national banks by (i) individuals, partnerships and associations; (ii) state- and federal-chartered savings and loan associations; (iii) state- and federal-chartered credit unions; (iv) small loan, consumer discount and finance companies; and (v) mutual savings banks. The Complaint sets forth that the shares of national banks are taxed at a greater rate than the rate of tax, if any, imposed on the several types of competing moneyed capital enumerated above in violation of R. S. 5219 and of the Constitution of the United States.

4. The Pennsylvania Case involves some issues in common with the Michigan Case and the determination of this Court in the Michigan Case may affect the outcome of the Pennsylvania Case.

5. The Pennsylvania Banks fully support the positions taken by Appellant and Intervening Plaintiffs in the Michigan Case, but the facts with respect to the tax imposed by Michigan on shares of national banks (the "Michigan bank shares tax"), and the taxes imposed by

Michigan on moneyed capital represented by shares of savings and loan associations are different from those involved in the Pennsylvania Case in that no tax is imposed in Pennsylvania on the moneyed capital represented by shares of such associations. Moreover, in the Pennsylvania Case, the Pennsylvania Banks complain that Pennsylvania imposes on the shares of national banks, in violation of R. S. 5219, a tax at a rate greater than that imposed on moneyed capital represented by shares of, or interests in, not only savings and loan associations but also the other types of business entities as set forth in paragraph 3 of this Motion.

6. The Pennsylvania Banks seek by a brief as amici curiae to present to this Court certain statements of positions to the end that the judgment of this Court in the Michigan Case (i) will be based upon positions which, if made applicable to similar issues in the Pennsylvania Case, would not be prejudicial to the Pennsylvania Banks and (ii) will not be based upon positions which might be inferentially dispositive of issues in the Pennsylvania Case which are not before the Court in the Michigan Case.

7. The parties to the Michigan Case have used arguments based on decisions of this Court concerning the legality under R.S. 5219 of taxes on national bank shares as compared with taxes on the same types of competing capital as those involved in the Pennsylvania Case. The weight given by this Court to such arguments and the discussion by this Court of such precedents might have an effect on the Pennsylvania Case.

8. Because of the extent to which the Michigan Case hinges on consideration of the intangibles tax im-

Motion to File a Brief as Amici Curiae.

posed on savings and loan shares and on shares of national banks, respectively, the Pennsylvania Banks believe that the following legal arguments will not be adequately presented by the parties:

(a) The decisions of this Court holding "mutual" savings institutions not competitive with national banks (at the particular time and place) do not establish a fixed rule of law that such "mutual" savings institutions are not competitive with national banks. Congress did not intend that court decisions could have the effect of a "freeze date" as of which competition of particular types of entities would be judged. The several decisions sustaining the legality under R.S. 5219, at the time, of state exemptions of capital of such institutions were based on economic and sociological factors believed by the Court to have been justifiably considered by the state at the time. Legally compelling economic and sociological considerations now deprive R.S. 5219 of practical meaning unless these types of competing entities are treated for the purposes of R.S. 5219 as large and powerful aggregations of capital substantially competitive with national banks.

(b) R.S. 5219, while designed to protect national banks from discriminatory taxation, has, and should have, the reciprocal effect of causing states to impose on moneyed capital represented by shares in competing entities a tax commensurate with that imposed on national banks. Artificial rules of law affording "partial exemptions" or holding specific types of competing capital to be legally non-competitive, regardless of the facts, would create reservoirs of untaxed or too lightly taxed capital. This would discriminate not only against national banks. It would also discriminate against the public generally by cutting down sources of revenue for

Motion to File a Brief as Amici Curiae.

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the states at a time when states are hard put to find sources of revenue.

(c) The parallel legislative development of the powers of national banks and "mutual" savings institutions as parts of our financial and credit structure demonstrates legislative recognition of competition among them and tends to prove a legislative attempt to preserve equality of competitive opportunity among financial institutions.

9. The Appellant has consented in writing to the filing of a brief by the Pennsylvania Banks as amici curiae but the Appellee has refused consent.

10. The brief which the Pennsylvania Banks request permission to file as amici curiae accompanies this motion.

Respectfully submitted,

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IN THE
Supreme Court of the United States

NO. 155 OCTOBER TERM, 1960

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States, Appellant, **NATIONAL BANK OF WYANDOTTE**, **THE FIRST NATIONAL BANK** (Three Rivers, Michigan), **COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN**, **THE NATIONAL BANK OF JACKSON**, and **THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO**, banking associations organized under the laws of the United States, Intervening Plaintiffs,

v.

STATE OF MICHIGAN, **DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN**, and **Louis M. NIMS**, State Commissioner of Revenue, Appellees..

On Appeal from the Supreme Court of the State of
Michigan

**BRIEF OF FOURTEEN NATIONAL BANKS IN
PENNSYLVANIA AS AMICI CURIAE**

Mellon National Bank and Trust Company, The Philadelphia National Bank, Pittsburgh National Bank, Central-Penn National Bank of Philadelphia, Western Pennsylvania National Bank, The Union National Bank of Pittsburgh, The First National Bank of Erie, First National Bank and Trust Company of Waynesburg, The Bradford National Bank, The First National Bank of Altoona, North-Eastern Pennsylvania National Bank and Trust Company, Easton National Bank and Trust Company, The National Bank of Boyertown and The Cones-

Interest of the Amici Curiae.

toga National Bank of Lancaster ("Pennsylvania Banks") file this brief as amici curiae in the above appeal by Michigan National Bank from a judgment of the Supreme Court of Michigan entered on February 25, 1960 affirming a judgment for appellees by the Court of Claims for the State of Michigan sustaining the legality under R.S. 5219 (12 U.S.C. 548) of a Michigan tax on national bank shares imposed for the year 1952.

INTEREST OF THE AMICI CURIAE

The Pennsylvania Banks are national banks in Pennsylvania. They are plaintiffs on behalf of themselves and other national banks in Pennsylvania in a suit pending in the Court of Common Pleas of Dauphin County, Pennsylvania seeking to restrain, as violative of R.S. 5219, the assessment and collection of a tax of 8 mills on the shares of national banks in Pennsylvania under the Pennsylvania Act of July 15, 1897, P. L. 292, as most recently amended by Act No. 476 of the 1959 General Assembly of Pennsylvania (Pa. Stat. Ann. Tit. 72, §1931 (1949) Pkt. Part 1959). The 1959 amendment increased the rate of tax from 4 mills to 8 milis for the years 1959 and 1960.

As set forth in the Motion to file this brief, the Pennsylvania Banks allege in their Complaint that moneyed capital in the hands of individual citizens of Pennsylvania represented, inter alia, by untaxed shares in savings and loan associations is employed in substantial competition with the business of national banks. The Pennsylvania Banks make reference to such Motion for additional details with respect to their interest in the above-entitled case.

ARGUMENT

I.

The Decisions of This Court Holding "Mutual" Savings Institutions Not Competitive With National Banks (at the Particular Time and Place) Do Not Establish a Fixed Rule of Law That Such Institutions Are Not Competitive With National Banks.

The appellees' argument and the opinions of the Court of Claims of Michigan and of the Supreme Court of Michigan say in effect that as a matter of law national banks may not complain, under R.S. 5219, against more favorable tax treatment accorded the shares of savings and loan associations since the latter by their nature are non-competitive with national banks. For example, the appellees' Motion to Dismiss or Affirm (page 22) speaks of:

"* * * the clear import of these decisions, which is simply that a state's tax on bank shares is not invalidated by §5219 if the state exempts or preferentially taxes for public policy reasons some moneyed capital."

Appellees further assert in their Motion to Dismiss or Affirm (page 29) that the existence of "factual competition" is an "immaterial issue."

The opinion of the Supreme Court of Michigan (Statement as to Jurisdiction, page 68b) says that:

"* * * Michigan building and loan associations operated in a narrow, restricted field, are markedly different in *character, purpose and organization* from national banks, and are not in 'substantial competition' with national banks." (Emphasis ours).

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The same Court, in discussing the opinion of the Court of Claims, said (ibid. page 50b) :

"The court justified its finding of no cause of action by stating its conclusions as follows:

(620) '1. Since 1887, the courts have consistently held in every case squarely involving the question that the State may exempt or prefer on the ground of public policy mutual savings bank and other like institutions, provided such exemption is based on just reason and is not made for the hostile purpose of an unfriendly discrimination with national banks.' "

The Supreme Court of Michigan also said (ibid. page 57b) :

"The approval of the Supreme Court of the United States of partial exemptions of mutual savings banks also applies to savings and loan associations, as shown by the following decisions:

[Citing *Mercantile National Bank of Cleveland v. Hubbard*, 98 Fed. 465, 471 (N.D. Ohio) affirmed *Lander v. Mercantile National Bank*, 186 U.S. 458, 22 S.Ct. 908, 46 L.ed 1247 (1902) ; *Hoening v. Huntington National Bank*, 59 F. 2d 479, 482 (C. A. 6 1932), certiorari denied 287 U.S. 648, 53 S.Ct. 93, 77 L.ed. 560 (1932)].

However, the cases cited do not establish a fixed rule of law. The appellant's brief filed in this Court makes it clear that the cases discussed by the Supreme Court of Michigan were decided against a different economic, sociological and factual background. There is no need for us to repeat the arguments of appellant that this Court should decide cases under R.S. 5219 on the basis

of whether or not the facts evidence the existence of substantial competition.

The Congress, in legislating against non-equivalent taxation of national bank shares, did not intend that court decisions should have the effect of a "freeze date" as of which competition of particular types of entities would be judged.

The several decisions sustaining the legality, at the time, under R. S. 5219 of state exemptions of capital of mutual savings banks or savings and loan associations were based on economic and sociological factors believed by the Court to have been justifiably considered by the state, at the time. Legally compelling economic and sociological considerations deprive R.S. 5219 of practical meaning unless these types of competing entities are treated for the purposes of R.S. 5219 as large and powerful aggregations of capital substantially competitive with national banks. In respect of savings and loan associations, this conclusion is strongly supported by the impressive showing in appellant's brief of the growth and financial strength of such institutions.

While a state may establish some exemptions for "just reasons," the privilege of maintaining the exemptions—as against the application of R.S. 5219—must surely depend on the continued validity of the reasons. Taxation is the rule and exemption is the exception.

In the cases cited by the Court below which sustain—against attack under R. S. 5219—preferential taxation or non-taxation of mutual savings institutions, the Court uses again and again the phrase "provided such exemption is based on just reason," e.g. *Mercantile National*

Bank v. New York, 121 U.S. 138, 7 S.Ct. 826, 30 L.ed. 895 (1886); *First National Bank v. Chehalis County*, 166 U.S., 440, 17 S.Ct. 629, 41 L.ed. 1669 (1897).

The "just reason" in a case under R.S. 5219 must surely be one that makes sense at the time.

This Court's recognition of the legitimacy of the exemption in the old cases is explained in *Mercantile National Bank v. New York*, 121 U.S. 138, 7 S.Ct. 826, 30 L.ed. 895 (1886); *Davenport National Bank v. Davenport Board of Equalization*, 123 U.S. 83, 8 S.Ct. 73, 31 L.ed. 94 (1887); *National Bank of Redemption v. Boston*, 125 U.S. 60, 8 S.Ct. 772, 31 L.ed. 689 (1887); *First National Bank v. Chehalis County*, 166 U.S. 440, 460, 461, 17 S.Ct. 629, 41 L.ed. 1069 (1897); *First National Bank v. Chapman*, 173 U.S. 205, 214, 19 S.Ct. 407, 43 L.ed. 669 (1899); *Mercantile National Bank v. Hubbard*, 98 F. 465, 471 (N.D. Ohio 1899).

Basically the reasons were to nurture institutions for the accumulation of small savings belonging to the thrifty, to nurture institutions under public (as distinguished from stockholder) management which handled savings of small depositors, to encourage associations which financed the building of small houses by poor people and the saving from their earnings week by week of an amount sufficient to pay the mortgage debt incurred in the purchase of the land and the construction of the house.

The appellant's brief filed in this Court points out the factual competition which exists between savings and loan associations and national banks. It points out the growth of savings and loan associations to a position of dominance in the residential mortgage business and

to a position of competing strongly for savings. It points out that, under the standards of *First National Bank v. Hartford*, 273 U.S. 548, 47 S.Ct. 462, 71 L.ed. 767 (1927), this Court should find the existence of competition on the basis of these overpowering facts.

We add to that argument the thought that, since this Court found itself impelled by sociological and economic considerations, valid at the time, to accord validity—for the purposes of R.S. 5219—to state exemptions or “partial exemptions” (“excusable discrimination” would have been a better phrase), it should for sound economic reasons now hold that the economic and sociological basis for the discrimination no longer exists.

We believe that this Court has already taken this step. *Hartford* would seem to prove it. An examination of the opinion of the state court in *Hartford* shows that one of the types of competing moneyed capital was building and loan shares. (187 Wis. 290, 203 N.W. 721 (1925)). In the case of *Commercial Nat'l Bank v. Custer County*, 76 Mont. 45, 245 Pac. 259 (1926), *rev'd per curiam* 275 U.S. 502, 72 L.ed. 395 (1927), a Montana tax which discriminated against national banks vis-a-vis, inter alia, savings and loan associations, was invalidated by this Court which reversed a state court on the authority of *Hartford* and *State of Minnesota v. First National Bank of St. Paul*, 273 U.S. 561, 47 S.Ct. 468, 71 L.ed. 774 (1927).

Other courts have held savings and loan associations competitive with national banks for purposes of R.S. 5219. See *Boise City Nat'l Bank v. Ada County*, 48 F.2d 222, 37 F.2d 947 (S.D. Idaho 1931, 1930) and *Na-*

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tional Bank of Commerce v. King County, 153 Wash. 351, 280 Pac. 16 (1929).

Appellant's brief quotes *Hartford* effectively to establish that it is not necessary, in order to invalidate a discriminatory tax, that there be a hostile or unfriendly discrimination against national banks. In *Commonwealth v. Mellon National Bank and Trust Company*, 374 Pa. 519, 525, 98 A. 2d 38 (1953), the Pennsylvania court says:

"The defendant on its part points to the case of *First National Bank of Hartford, Wisconsin v. City of Hartford*, 273 U. S. 548, where Mr. Justice Stone, speaking for the Supreme Court, appears to have put at rest any idea that to be violative of Section 5219 of the Revised Statutes the discrimination must be hostile or unfriendly, when he said (pp. 560-561),—'Finally it is said that § 5219 is directed to an unfriendly discrimination or hostile attitude on the part of a state and that here the Wisconsin legislation was not dictated by such considerations, since the challenged exemptions were merely incidental to the adoption of a state policy of substituting, so far as possible, an income for a personal property tax. But a consideration of the entire course of judicial decision on this subject can leave no doubt that state legislation and taxing measures which by their necessary operation and effect discriminate against capital invested in national bank shares in the manner described are intended to be forbidden.' In short, whether or not a State tax on the shares of a National bank offends against Section 5219 of the Revised Statutes does

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not depend upon a hostile or unfriendly intent on the part of the taxing authority. . . ."

However, if we assume, *arguendo*, the survival of a vestige of the "hostility" doctrine in cases where exemptions or partial exemptions are involved, we suggest that failure of the states to recognize in their tax structure the tremendous growth and powerful position of savings and loan associations would qualify as a hostile discrimination.

To hold at this time that these large, powerful and aggressively competitive savings institutions are, as a matter of law, not competitive with national banks is to ignore economic facts. Conversely, recognition of economic facts compels recognition of the existence of competition.

II.

Artificial Rules of Law Holding Specific Types of Competing Capital to Be Legally Non-Competitive Regardless of Facts Would Create Reservoirs of Untaxed or Too Lightly Taxed Capital. This Would Discriminate Not Only Against National Banks, But Also Against the Public Generally By Cutting Down Sources of Revenue for the States at a Time When States Are Hard Put to Find Sources of Revenue.

National banks, when they invoke R.S. 5219, are not seeking to avoid taxation. They are seeking to enforce a Congressional mandate for equivalence in taxation of national bank shares.

R.S. 5219 gives Federal consent to the taxation of national banks in several ways, one of which is a tax on

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shares. The consent given by R.S. 5219 to taxation of national banks is subject to the proviso that national bank shares may not be taxed at a higher rate than that imposed on other moneyed capital, etc. Observance by the states of R.S. 5219 or application thereof by this Court has the reciprocal effect of causing other moneyed capital to bear a tax burden equivalent to that of national banks.

The actual imposition of the equivalent tax is, of course, by the legislature. This Court cannot influence the imposition of equivalent taxation of other moneyed capital except indirectly by striking down a state tax on shares of national banks at a rate exceeding that imposed on competitive moneyed capital.

Hepburn v. School Directors, 23 Wall (90 U.S.) 480, 23 L.ed. 112 (1875), said in effect that Congress did not intend to exempt bank shares from taxation because some moneyed capital was exempt. But *Hepburn* does not validate an unjustified discriminatory exemption which imposes on national banks and other members of the general public the burden of making up the deficiency.

In determining for purposes of R.S. 5219 whether there is a "just reason" for exemption or partial exemption from taxation of competitive moneyed capital, there should be considered not only the effect of the discrimination on national banks but also the effect of the partial or total exemption as an escape from responsibility for a just share in the cost of state government.

III.

The Parallel Development of Powers of National Banks and of Other Financial Institutions Demonstrates Legislative Recognition of Competition Between Such Financial Institutions and Tends to Prove a Legislative Attempt to Preserve Comparative Equality of Competitive Opportunity Among Such Institutions in Fields in Which They Are Competitive.

Appellant's brief (pp. 18-20; 67-70) discusses the evolution of the power of national banks to make mortgage loans and accept savings deposits and a similar evolution of the lending powers of savings and loan associations and their power to receive savings capital. The discussion from that brief is submitted as an integral part of our argument under the above heading.

That discussion, however, can be profitably supplemented by additional reference to the parallel development of corporate powers of competing financial institutions.

A reference to 12 U.S.C. 1464 (48 Stat. 132; 48 Stat. 645, 646; 49 Stat. 297; 53 Stat. 1402; 61 Stat. 786; 62 Stat. 1239; 65 Stat. 490; 66 Stat. 604; 68 Stat. 622; 69 Stat. 640, 641; 70 Stat. 1114) and particularly to the Historical Note following 12 U.S.C.A. 1464 indicates the step by step enlargement of the powers of federal savings and loan associations. They may now, without regard to area restrictions, lend money on improved real estate insured under the provisions of the National Housing Act, as amended, or insured as provided in the Servicemen's Readjustment Act of 1944, as amended. They may lend not in excess of 15% of their assets in

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unsecured loans insured or guaranteed under the Servicemen's Readjustment Act. They may invest in conventional mortgages for longer terms and in an increasing percentage of appraised value. They may invest in obligations of Federal National Mortgage Associations. They may lend not exceeding 20% of their assets on improved real estate without regard to the \$35,000 limitation or the 50 mile limit. They may invest in obligations of the United States; they may invest amounts less than 5% of their withdrawable accounts in loans to finance acquisition and development of land. They may have branches (*North Arlington National Bank v. Kearny Federal Savings and Loan Association*, 187 F. 2d 564 (C.A. 3 1951) (cert. den. 342 U.S. 816, 72 S. Ct. 30, 96 L.ed. 617) (1951)).

With respect to national banks, an examination of 12 U.S.C. 24 (R.S. 5136) and particularly the notes to 12 U.S.C. 24 and a reference to 12 U.S.C. 371 (38 Stat. 273; 39 Stat. 754; 44 Stat. 1232; 48 Stat. 1263; 49 Stat. 706, 717; 55 Stat. 62; 60 Stat. 1072; 62 Stat. 265; 63 Stat. 906; 64 Stat. 80; 65 Stat. 303, 312; 67 Stat. 614; 68 Stat. 525; 68 Stat. 736; 69 Stat. 633, 634; 72 Stat. 396; 73 Stat. 489) and particularly the notes to 12 U.S.C.A. 371 indicates the growth of power to buy investment securities, to receive savings deposits, to invest in government obligations, to invest in obligations of Federal National Mortgage Association; to invest in mortgages in increasing percentages of appraised value, to invest in mortgages insured by government agencies and to engage in the safe deposit business. National banks may have branches under the same provisions as are applicable to state banks. R.S. § 5155, as amended. 12 U.S.C. 36.

In addition, the Federal Reserve System accommodates mutual savings banks as well as commercial banks. Act of Dec. 23, 1913 c.6 §9 as added June 16, 1933 c.89 §5, 48 Stat. 164, as amended, 12 U.S.C. 333. Mutual savings banks and both state chartered and federal savings and loan associations are eligible for membership in the Federal Home Loan Bank. Act of July 22, 1932 c.522 §4, 47 Stat. 726, as amended, 12 U.S.C. 1424. They are also entitled to use the reserve credit facilities of that system.

Mutual savings banks are entitled, along with commercial banks, to the advantages of insurance under the Federal Deposit Insurance Corporation. Act of Dec. 23, 1913, c.6 §12B, as added, June 16, 1933, c.89 §8, 48 Stat. 168, as amended, 12 U.S.C. 264 (f) (1); Act of Sept. 21, 1950 c.967 §2 [4], 64 Stat. 873, 12 U.S.C. 1814. Analogous insurance is provided for savings and loan associations by the Federal Savings and Loan Insurance Corporation. Act of June 27, 1934 c.847 Title IV §403, 48 Stat. 1257, as amended, 12 U.S.C. 1726.

The atmosphere of competition by and among commercial banks (including national banks) mutual savings banks and savings and loan associations was clearly recognized in 1951 when Congress agreed that mutual savings banks and savings and loan associations should become subject to Federal income taxation. In Senate Report No. 781 by the Senate Committee on Finance to accompany H.R. 4473, 82nd Congress, 1st Session (now Revenue Act of 1951, 65 Stat. 452), it is stated as follows: (Volume 2, Cumulative Bulletin, Internal Revenue Service, Page 476:)

"At the present time, mutual savings banks are in active competition with commercial banks and

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life insurance companies for the public savings, and they compete with many types of taxable institutions in the security and real estate markets. As a result your committee believes that the continuance of the tax-free treatment now accorded mutual savings banks would be discriminatory. So long as they are exempt from income tax, mutual savings banks enjoy the advantage of being able to finance their growth out of earnings without incurring the tax liabilities paid by ordinary corporations when they undertake to expand through the use of their own reserves. The tax treatment provided by your committee would place mutual savings banks on a parity with their competitors."

and later at page 478:

"The grounds on which your committee's bill taxes savings and loan associations on their retained earnings, after making a reasonable allowance for additions to reserves for bad debts, are the same as those on which mutual savings banks are taxed under the bill. Moreover, since savings and loan associations are no longer self-contained cooperative institutions as they were when originally organized there is relatively little difference between their operations and those of other financial institutions which accept deposits and make real estate loans."

The case of *Franklin National Bank v. New York*, 347 U.S. 373, 74 S.Ct. 550, 98 L.ed. 767 (1954) also contains interesting observations on the development of mutual savings banks and national banks in an atmosphere of competition. The case held that New York

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may not lawfully prohibit national banks from using "saving" or "savings" in their advertising or business.

Mr. Justice Jackson's opinion, announced by Mr. Justice Frankfurter, said, among other things:

"It is the policy of New York to charter and foster the mutual savings bank, a nonprofit institution whose earnings inure to the benefit of depositors rather than to stockholders. These institutions have a long history as relatively stable and safe depositories for the accumulations of thrifty New Yorkers and as a source of credit for limited uses. They have grown to be an important part of New York's banking and economic structure. That State also charters the savings and loan association, an institution of a different type, intended to serve somewhat similar ends. The Legislature was concerned lest commercial banks, in seeking to induce deposits of the same character, so use the word 'savings' as to lead uninformed and indiscriminating persons to believe that they were dealing with the chartered savings institutions. Hence, by its Banking Law, New York has forbidden use of the word 'savings' or its variants, by any banks other than its own chartered savings banks and savings and loan associations.

"However, the Federal Government is a rival chartering authority for banks. * * * That these federal institutions may be at no disadvantage in competition with state-created institutions, the Federal Government has frequently expanded their functions and authority. Of such nature are the measures now before us. (374-375).

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"The Federal Reserve Act provides that a national bank 'may continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same * * *' (375).

"Nor can we construe the two Federal Acts as permitting only a passive acceptance of deposits thrust upon them. Modern competition for business finds advertising one of the most usual and useful of weapons. We cannot believe that the incidental powers granted to national banks should be construed so narrowly as to preclude the use of advertising in any branch of their authorized business." (377).

The New York Legislature in adopting the legislation which was invalidated by this Court was obviously making an effort to improve the competitive position of mutual savings banks vis-a-vis national banks. This Court recognized the effort for what it was and held, on the ground that national banks derived their powers from the federal government, that the state limitation was invalid. The only conclusion that can be drawn from this case and from the legislative history of the development of powers of the several types of financial institutions is that they are recognized by the legislatures as being in competition with one another.

The doctrine embraced by the appellees and the court below that savings and loan associations are legally noncompetitive although factually competitive is naive sophistry denied by years of legislative evolution.

CONCLUSION

While the Pennsylvania Banks and the Pennsylvania tax imposed on shares of national banks are not directly involved in the above-entitled case, the Pennsylvania Banks respectfully submit that the judgment of the Supreme Court of Michigan was in error and should be reversed.

Respectfully submitted,

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NOV 28 1960

JAMES R. BROWNING, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST
NATIONAL BANK (THREE RIVERS, MICHIGAN),
COMMERCIAL NATIONAL BANK OF IRON MOUN-
TAIN, THE NATIONAL BANK OF JACKSON, and THE
FIRST NATIONAL BANK AND TRUST COMPANY OF
KALAMAZOO, banking associations organized under the
laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and LOUIS M. NIMS,
STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

OBJECTIONS OF THE STATE OF MICHIGAN TO
MOTION OF FOURTEEN NATIONAL BANKS IN
PENNSYLVANIA FOR LEAVE TO FILE A BRIEF
AS AMICI CURIAE

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN), COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

OBJECTIONS OF THE STATE OF MICHIGAN TO MOTION OF FOURTEEN NATIONAL BANKS IN PENNSYLVANIA FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE

Pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States, appellees move that the Motion of Fourteen National Banks in Pennsylvania for Leave to File a Brief as Amici Curiae [hereinafter referred to as the "Motion"] be denied for the following reasons, to wit:

1. As stated on page 7 of appellees' Motion to Dismiss

or to Affirm, heretofore filed in this cause, the above-captioned matter involves:

"Is Act 9, Michigan Public Acts of 1953, [hereinafter referred to as Act 9][1] which imposed for the year 1952 a tax of 5½ mills on national bank shares, invalid under § 5219[2] because the Michigan legislature has not treated a savings share account of a savings and loan association as being equivalent to a share of national bank stock, when the national bank loans a portion of its deposit money on residential properties and the savings and loan associations employ their mutual share account moneys for the same general purpose?"

2. The Pennsylvania case referred to in the Motion[3] could not possibly involve any issues in common with this cause, since none of the banks or the alleged competing individuals and financial institutions are subject to any taxation whatsoever by the State of Michigan, nor do they carry on any alleged competing activities within the State of Michigan.

3. The nature of the interest, if any, of the fourteen national banks in Pennsylvania is remote, indirect, and

[1]

Michigan Compiled Laws § 205.132a; Michigan Statutes Annotated '59 Cumulative Supplement (Henderson) § 7.536 (2a).

[2]

12 U.S.C., Section 548; 13 Stat. 111, as amended by Stat. 34; 42 Stat. 1499; and 44 Stat. 223.

[3]

Mellon National Bank and Trust Company, et al. [the Fourteen National Banks of Pennsylvania] v. *Charles M. Dougherty, Secretary of Revenue*, in the Court of Common Pleas of Dauphin County, Pennsylvania, Equity No. 2395, No. 25, Commonwealth Docket, 1960.

not germane; thus, their involvement in this case, as amici curiae, would burden the State of Michigan and this Court with extraneous and unnecessary argument and would tend to confuse and distort the legal issues pending between the parties to this cause, without any foreseeable benefit.

4. Any involvement in this cause of the fourteen national banks in Pennsylvania, as amici curiae, will undoubtedly require the additional involvement of the Attorney General of Pennsylvania, as amicus curiae, thus tending to convert this cause into a review by this Court — prior to trial and review in the Pennsylvania courts — of the issues sought to be adjudicated there by the fourteen national banks in Pennsylvania and the Attorney General of Pennsylvania.

5. An examination of the Statement as to Jurisdiction, the Motion to Dismiss or to Affirm, the Brief of Appellant Opposing Appellees' Motion to Dismiss or to Affirm, and the briefs of the respective parties in this cause filed in the Supreme Court of Michigan, clearly demonstrates that the parties are competent to and have adequately presented, to the extent material in this cause, the legal arguments referred to on pages 4 and 5 of the Motion [subparagraphs enumerated (a), (b), and (c) of paragraph 8], and for this reason the fourteen national banks in Pennsylvania have not brought themselves within the requirements of paragraph enumerated 3 of Rule 14 of the Revised Rules of this Court.

The appellees in this cause have withheld their consent to the filing of a brief as amici curiae of the fourteen national banks of Pennsylvania for the above reasons.

Wherefore, it is respectfully requested that this Court deny the Motion of Fourteen National Banks in Pennsyl-

-4-

vania for Leave to File a Brief as Amici Curiae in this
cause.

Respectfully submitted,

PAUL L. ADAMS,
ATTORNEY GENERAL,
STATE OF MICHIGAN

Samuel J. Torina
Solicitor General

William D. Dexter
Assistant Attorney General
For Appellees

Business Address:
The Capitol
Lansing, Michigan

CERTIFICATE OF SERVICE

I hereby certify that copies of the aforesaid Objections
to Motion of Fourteen National Banks in Pennsylvania
for Leave to File a Brief as Amici Curiae have been served,
by depositing the same in the United States mails, with

first class air mail postage prepaid, upon the following counsel:

THOMAS G. LONG
VICTOR W. KLEIN
PHILIP T. VAN ZILE, II
HAROLD A. RUEMENAPP

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Intervening Plaintiffs

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Building
Philadelphia, Pennsylvania

THOMAS L. WENTLING
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Pittsburgh, Pennsylvania

W. WILSON WHITE
19th Floor, Land Title Building
Philadelphia, Pennsylvania
Attorneys for the Pennsylvania
Banks

On this — day of
November, A.D. 1960.

William D. Dexter
Assistant Attorney General

FILED

DEC 13 1960

IN THE SUPREME COURT OF THE UNITED STATES

JAMES A. BOWLING, Clerk

October Term, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST
NATIONAL BANK (THREE RIVERS, MICHIGAN),
COMMERCIAL NATIONAL BANK OF IRON MOUN-
TAIN, THE NATIONAL BANK OF JACKSON, and
THE FIRST NATIONAL BANK AND TRUST COM-
PANY OF KALAMAZOO, banking associations organ-
ized under the laws of the United States,

Intervening Plaintiffs,

VS.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and LOUIS M. NIMS,
STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

Objections to and Motion to Dismiss Motion of Sixty-
Eight Banks in Michigan for Leave to File a Brief as
Amici Curiae and Brief Amici Curiae

PAUL L. ADAMS

Attorney General

Samuel J. Torina

Solicitor General

T. Carl Holbrook

Business Address:

William D. Dexter

The Capitol

Assistants Attorney General

Lansing, Michigan

For Appellees

MICROCARD

TRADE MARK



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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States,

Appellant, ●

NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN), COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

Objections to and Motion to Dismiss Motion of Sixty-Eight Banks in Michigan for Leave to File a Brief as Amici Curiae and Brief Amici Curiae

Appellees object to the "Motion for Leave to File a Brief as Amici Curiae" (hereinafter referred to as the "motion") filed in this cause by sixty-eight banks in Michigan and have withheld their consent from the filing of the brief attached to said motion (hereinafter referred

to as the "brief amici curiae") for the following reasons, to-wit:

1. That the stated purpose of the motion and brief amici curiae of the sixty-eight banks in Michigan is to establish that the position of those banks in regard to Act No. 9 of the Michigan Public Acts of 1953 is contrary to the position of the Michigan Bankers Association as set forth in that Association's amicus curiae brief filed in the trial court, as follows:

“ “The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of the competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantage among the various types of institutions; and that it has proven to be simple to administer. Such a system is obviously desirable, and this association, believing the system to be entirely legal within the limitations of the Federal Constitution and statutes, does not want to see it destroyed.” ” (R. 1336-1337)

2. That the affidavit of Ralph L. Stickle, attached hereto and made a part hereof, clearly demonstrates that the membership of the Michigan Bankers Association was apprised of the position taken by that Association as to Act No. 9 of the Michigan Public Acts of 1953, that member banks were requested to offer comments in regard to such positions, and that no bank other than the Michigan

National Bank ever objected to the Association in regard to that position.

3. That as established by the affidavits; attached hereto and made a part hereof, of officers of two of the sixty-eight banks listed as amici curiae on the motion and brief amici curiae, their participation was solicited by employees of the Michigan National Bank and at the time of solicitation they were handed only the documents referred to in their affidavits, which are attached hereto and labeled "Document No. 1" and "Document No. 2," consisting of a proposed brief amicus curiae of banks operating in Michigan, signed by Howlett, Hartman and Beier, Attorneys for the Community National Bank of Pontiac, and an authorization that the name of the solicited bank be added to a brief amicus curiae in the United States Supreme Court, No. 155.

4. That as further established by the aforesaid affidavits referred to in No. 3. above, when their participation in this cause was solicited and they signed authorizations to have the names of their respective banks appear on an amicus curiae brief in this cause, they were not informed of the true nature of the controversy, they had not examined any records or briefs in this cause, they were not familiar with Michigan's taxation of savings and loan associations as compared to banking associations, and they did not intend to take a position as to the desirability, feasibility and validity of Art No. 9 of the Michigan Public Acts of 1953.

5. That the content of the motion and brief amici curiae is in complete conflict with the content of the attached affidavit of Ralph L. Stickle, setting forth the position of the Michigan Bankers Association, and the affidavits of the officers of two of the amici curiae banks; and that the

affidavit of Ralph L. Stickle sets forth the position of at least the overwhelming majority of the 390 banks in Michigan.

6. That only the five intervening-plaintiff banks in this cause and the Community National Bank of Pontiac and Community National Bank of Ithaca, of all the banks listed in the motion and the brief amici curiae, have paid under protest or sought to recover any taxes imposed by Act No. 9 of the Michigan Public Acts of 1953 [although the right to recover any such taxes is subject to a three-year statute of limitations] or have in any way attempted to participate in this cause until specifically solicited by appellant.

7. That under *Union Bank and Trust Co. v. Phelps*, (1933) 288 U.S. 181, and the severability statute of the State of Michigan (Mich. Comp. Laws 1948, § 8.5; Mich. Stat. Ann. (Henderson) § 2.216), the invalidation of the share tax as to national banking associations could not inure to the benefit of state banking associations.

8. That subsequent to the filing of the motion of the sixty-eight banks in Michigan for leave to file a brief as amici curiae in this cause, certain of said banks have withdrawn their authorizations and asked that their names be dropped from participating in this cause as amici curiae on behalf of the appellant, Michigan National Bank.

9. That the brief amici curiae does not conform to the requirements of Rule 42, paragraph 3, of the Revised Rules of the Supreme Court of the United States. It is not an effort to place before this Court *facts* which the amici curiae banks believe will not be adequately presented or dealt with in the briefs of the principal litigants to this cause, but is purportedly offered as the position of sixty-eight banks, *without any proof*.

10. That the above statements clearly establish that the participation of the sixty-eight banks as amici curiae has been directly solicited by the Michigan National Bank (as specifically alleged in the attached affidavits of officers of two of such banks) so that the appellant may use the product of this solicitation, namely, the permission to use the names of these banks on an amici curiae brief in this cause, in an attempt to mislead this Court into believing that the position taken by the Michigan Bankers Association as expressed in paragraph 1 above is not representative of the Michigan banks.

It is therefore respectfully submitted that since the motion and brief amici curiae constitute but an effort of the appellant to extend its lawsuit beyond the facts established in this cause, and since the brief amici curiae does not conform to the requirements of Rule 42, paragraph 3, of the Revised ^{Rules} Statutes of the Supreme Court of the United States, the motion of the sixty-eight banks in Michigan to file a brief amici curiae should be dismissed and both that motion and the brief amici curiae attached thereto should be stricken from the files of this cause as constituting merely a groundless allegation concerning the position of sixty-eight banks in Michigan, being in direct conflict with the affidavits filed in support of this motion and these objections.

PAUL L. ADAMS,
Attorney General

Samuel J. Torina,
Solicitor General

T. Carl Holbrook,
William D. Dexter
Assistants Attorney General

William D. Dexter
Assistant Attorney General

For Appellees
The Capitol
Lansing, Michigan

DOCUMENT NO. 1

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1960
No. 155

MICHIGAN NATIONAL BANK,
ET AL.,

Appellants,

vs.

MICHIGAN, ET AL.

BRIEF AMICUS CURIAE
OF
BANKS OPERATING IN MICHIGAN

The undersigned banking associations operating in the State of Michigan are deeply concerned about the outcome of the above appeal because of the serious impact it may have upon our future and continued operations.

It is their position that

1. Savings and loan associations are their most vigorous competitors in the business of making residential mortgage loans in the localities where they do business.

2. Such business is a most vital and important part of the lending business of the undersigned banks.

3. Act 9 of the Public Acts of Michigan of 1953 imposes a tax on shares of banks eight to thirteen times greater than that imposed upon moneyed capital invested in savings and loan associations.

4. Such tax by the State of Michigan is discriminatory, highly inequitable and has given savings and loan associations a great and unwarranted competitive advantage, and, if continued, will seriously injure the undersigned banks.

CONCLUSION

To safeguard the interests of banks in the State of Michigan, we respectfully submit that this Court should uphold the position of appellant bank in the above case and reverse the judgment of the Michigan Supreme Court.

COMMUNITY NATIONAL BANK OF PONTIAC

By Howlett, Hartman and Beier,
Attorneys

DOCUMENT NO. 2

Howlett, Hartman and Beier
1000 Pontiac State Bank Building
Pontiac, Michigan

Gentlemen:

You are authorized to add our name to that of the Community National Bank and other banks, joining in a Brief Amicus Curiae in the United States Supreme Court, No. 155.

Very truly yours

-8-

**AFFIDAVIT OF RALPH L. STICKLE
EXECUTIVE MANAGER AND OFFICER,
MICHIGAN BANKERS ASSOCIATION**

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

Now comes Ralph L. Stickle, who being first duly sworn, on his oath deposes and says that he is an officer and the Executive Manager of the Michigan Bankers Association, located at 1502 Bank of Lansing Building, Lansing, Michigan; that the Michigan Bankers Association membership consists of every bank in Michigan, numbering approximately 390; that in his capacity as officer and Executive Manager of the Michigan Bankers Association, he attends the Executive Committee and other committee meetings, including the Taxation Committee meetings, and that he is familiar with the action taken by these committees; that he is charged with the duty and responsibility of implementing such committee action and disseminating information concerning the same; that as part of his duties, he keeps minutes of the various committee meetings, including Executive Committee meetings, and from time to time issues bulletins that are distributed to the members and that become permanent bound records of the Michigan Bankers Association, setting forth the official position of the Association in reference to the matters contained in such bulletins; that he has under his custody and control, in the executive offices of the Michigan Bankers Association at the above address, records indicating the official action taken by such committees; that he is familiar with the position of the Michigan Bankers Association with reference to the enactment and support of the legislation contained in Act 182 of the Michigan Public Acts of 1952 and Act 9 of the Michigan Public Acts of 1953; that he is acquainted with the litiga-

tion pending between the State of Michigan and the Michigan National Bank concerning the validity of the aforesaid Act 9 and that he has been authorized to make this affidavit in support of the position taken by the State of Michigan in reference to the aforesaid Act 9; that all the matters herein set forth are within his personal knowledge; that he is not disqualified from being a witness and, if he is sworn as a witness, he could testify competently to the matters hereinafter set forth; that in support of the State of Michigan's position in reference to the aforesaid Act 9, he further deposes and says:

1. That as shown by the minutes of the Michigan Bankers Association (hereinafter referred to as the "Association"), Act 182 of the Michigan Public Acts of 1952, which imposed an additional 4 mill tax on the capital account of national and state banking associations and trust companies, was felt to be unconstitutional as applied to national banks and that by letter dated April 22, 1952, incorporated in the minutes of the Association, the Governor of the State of Michigan, the Hon. G. Mennen Williams, was informed of this fact;
2. That both the Legislature and the Association were concerned with the problem of uniform, equitable taxation of state and national banks and trust companies; and counsel of the Association, by action of the Legislative, Taxation, and Executive Committees, were instructed to work with the Legislative and Taxation Committees of the Association to draft and recommend to the Legislature what was felt to be a feasible, valid and equitable tax for banking associations and trust companies in the State of Michigan within the limitations placed upon states to tax national banks by section 5219 of the Revised Statutes of the United States;

3. That the Association, through its counsel and Taxation and Legislative Committees, unanimously recommended to the Legislature the adoption of Act 9 of the Michigan Public Acts of 1953 to replace the additional tax imposed on banks and trust companies by Act 182 of the Michigan Public Acts of 1952;

4. That the Executive Committee, on February 11, 1954, set forth in the Association's Official Minutes, on pages 575 and 576, the Association's official position in regard to Act 9 of the Michigan Public Acts of 1953 as follows:

"The Michigan Intangibles Tax law was the subject of considerable discussion brought about by the fact that a brief has been filed by the Michigan National Bank to recover taxes paid under this act, the main contention being that the tax is unconstitutional, based on the premise that bank capital and other monied capital in substantial competition are not taxed alike, as the Constitution requires.

"It was pointed out that in 1953 the Michigan Bankers Association cooperated with members of the Legislature to effect an amendment to the Michigan Intangibles Tax Act placing state banks, national banks, and trust companies on a common tax basis. The committee felt that because of the fact that the Michigan Bankers Association, through its committees, sponsored this legislation in the interest of placing state banks, national banks and trust companies on a common tax basis, the Association should stand on the side of the State and the Legislature in support of the State's contention that the tax is legal and constitutional. As a result the following resolution was unanimously adopted:

"WHEREAS the Michigan Bankers Association has been requested to appear as a friend of the court and to file a brief in the suit now pending against the State of Michigan questioning the constitutionality of the Intangibles Tax Act and

"WHEREAS this legislation has the support of the Michigan Bankers Association through its various committees, it is therefore

"RESOLVED, that the Association appear as a friend of the court and that the counsel for the Association be directed to represent the Association in this matter."

5. That pursuant to this resolution, counsel for the Association have participated in support of the position of the State of Michigan in the litigation between the Michigan National Bank and the State of Michigan over the validity of Act 9 of the Michigan Public Acts of 1953.

6. That the position of the Association is properly stated in the brief filed on behalf of the Association in the Court of Claims for the State of Michigan, wherein it is stated:

"The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantages among the various types of institutions; and that it has proven to be simple to admin-

ister. Such a system is obviously desirable, and this Association, believing the system to be entirely legal within the limitations of the Federal Constitution and Statutes, does not want to see it destroyed."

7. That the *Legal Bulletin* of the Michigan Bankers Association, No. 2395, dated July 2, 1959, and the *General Bulletin* of the Association, No. 2407, dated April 7, 1960, both appended hereto in material part as Exhibits "A" and "B", respectively, set forth (among other matters) the official position of the Association relative to the Intangibles Tax imposed on bank shares by Act 9 of the Michigan Public Acts of 1953.

8. That such bulletins are sent to all members of the Association and that the Association has received no objection to the position taken by it as there announced in reference to Act 9 except the objection of the Michigan National Bank.

9. That the position of the current Taxation Committee concerning Act 9 is stated thusly on page 21 of the Association's 1959-1960 Annual Report:

"The Committee unanimously adopted a resolution upholding the action of a previous M.B.A. [Michigan Bankers Association] Taxation Committee in its defense of the intangible tax. It was felt that this action was in keeping with our obligation to the legislature, and that a tax review at this time would not be favorable. * * * [Bracketed material added]

10. That the position set forth in the aforesaid amicus curiae brief (paragraph 6 above) and the two bulletins referred to in paragraph 7 above represent the only position the Association has taken pertaining to Act 9 of the

Michigan Public Acts of 1953 and does constitute the current position of said Association.

Further, deponent sayeth not.

/s/ ~~RALPH L. STICKLE~~

Ralph L. Stickle,

On this 9th day of December, A.D. 1960, personally appeared before me, a Notary Public in and for said County, Ralph L. Stickle, who being first duly sworn did say that he is an officer and the Executive Manager of the Michigan Bankers Association, located at 1502 Bank of Lansing Building, Lansing, Michigan; that he has read the foregoing Affidavit by him subscribed and knows the contents thereof and that the statements contained therein are true of his own knowledge, except as to those matters stated on information and belief, and as to those matters, he believes it to be true; and that he is duly authorized to sign and verify the foregoing affidavit on behalf of said Association.

/s/ LEONA M. HUDNUT

Notary Public, Ingham County,
Michigan

My commission expires 10-6-64

Exhibit "A"

Organized M B A 1887

LEGAL BULLETIN

MICHIGAN BANKERS ASSOCIATION

Lansing 16

Executive Manager

RALPH L. STICKLE

1502 Bank of Lansing Building

Telephone IVanhoe 2-0679

No. 2395

July 2, 1959

TAXES

The purpose of this bulletin is to lay before the membership the Michigan Bankers Association's position relative to the Intangibles Tax and other tax proposals currently being considered by the Michigan State Legislature.

THE INTANGIBLES TAX

The present Intangibles Tax Law as it applies to bank shares and deposits, was conceived and sponsored by the Michigan Bankers Association through the Association's Taxation Committee. The membership of this committee was composed of a cross-section of Michigan banking, representing both national and state banks, and both large and small banks. Prior to the adoption of the present Intangibles Tax Law, there existed a serious tax inequity between state and national banks. National banks were protected by Section 5219 of the National Banking Act which states that a State can tax a national bank by only one of four methods:

- (1) A tax on bank shares
- (2) A tax on the income on bank shares
- (3) A tax measured by bank income
- (4) An income tax on the bank.

State banks, on the other hand, are exposed to any tax which the Legislature may see fit to impose.

In writing the present Intangibles Tax Law, the Legislature agreed to our proposal that all banks in the state should be taxed exactly alike and to accomplish this, gave state banks an exemption from the franchise tax which they had been paying. The Legislature further agreed that since national banks were protected by Section 5219 and therefore, could not be subject to other taxes which in the future might be imposed on business and industry in this State, both state and national banks in the future would be exempt from such tax proposals. On the assurance of the Association that we would help the State defend any attack on the legality of the tax, the Legislature enacted the statute as we proposed it. Subsequently, when the State adopted a business activities tax, the Legislature lived up to its agreement and exempted all banks from this tax. It is our firm conviction that the Association has a responsibility to the Legislature to live up to the agreement which was made at that time, especially in view of the fact that the Legislature has lived up to its agreement to impose only one tax on banks in this state, and to give state banks the same protection which national banks enjoy under Section 5219.

LEGALITY OF THE INTANGIBLES TAX QUESTIONED

As is true of almost any tax, the legality of the Michigan Intangibles Tax Act has been questioned. The Michigan National Bank, together with certain other national banks in this State, brought suit against the State of Michigan for recovery of the Intangibles Tax on bank shares which it claims are being paid illegally for the reason that Section 5219 of the National Banking Act

states that all moneyed capital in substantial competition must be taxed alike. In its case against the State, Michigan National Bank maintains that savings and loan associations are in substantial competition and do not pay the same rate of tax as do banks under the Intangibles Tax Act.

The Michigan Bankers Association, together with several other banks in the state of Michigan, filed a brief as friend of the court, joining with the Michigan Department of Revenue in defense of the present Intangibles Tax Act, both because we feel that we had an obligation to the Michigan State Legislature, and because we felt that the Intangibles Tax Act was desirable.

OTHER MONEYED CAPITAL

The Michigan National Bank's case is directed against savings and loan associations, maintaining that savings and loan associations constitute other moneyed capital in substantial competition with banks. The Michigan National Bank's position was explained in a letter from that bank to the banks in this State, dated June 8, 1959. The case involving savings and loan associations is now pending in the Michigan Supreme Court.

We appreciate that savings and loan associations are stiff competition, some of which may be due to a favored tax treatment but basically, this is because of their favored tax treatment by the Federal Government, not the State of Michigan. In comparison, the State tax is trivial. Furthermore, whether or not there is any favoritism shown them by the present Michigan share tax depends entirely on whether you view their "savings accounts" as being analogous to bank shares or bank deposits. If such accounts are similar to deposits, there is no inequity.

If they are similar to shares, there is an inequity. The Michigan Bankers Association has felt that while these accounts may be similar to bank shares from the legal point of view, for all practical business purposes they are more analogous to bank deposits and therefore, the respective tax burdens should be measured by spreading them over the total resources of each institution. Viewed in this manner, the present tax is not unfair and imposes as much tax burden on savings and loan associations as it does on banks, as is indicated by the following tax comparison:

TAX COMPARISONS OF MICHIGAN BANKS AND SAVINGS AND LOAN ASSOCIATIONS (1957-1958)

	Michigan Banks	Michigan Savings & Loan Associations
Total Assets	\$8,609,444,000	\$1,364,033,626
Gross Income	\$ 322,286,000	\$ 60,024,713
Expenses (including dividends on savings account shares of savings and loan associations)	231,523,000	48,939,502
Net Income before taxes and in case of savings & loans before reserve additions	\$ 90,763,000	\$ 11,085,211
Intangible Taxes	\$ 5,900,251	\$ 454,899
Franchise Taxes	-	284,372
Total	\$ 5,900,251	\$ 739,271

Ratio of franchise and intangibles taxes to:

Total Assets	.069%	.054%
Net Income before income taxes and in case of savings and loans before reserve additions	6.50%	6.67%

We will welcome your comments, suggestions and criticisms in our effort to maintain a fair and equitable State Tax on Michigan financial institutions.

Very truly yours,
Ralph L. Stickle
Executive Manager

Exhibit "B"

Organized M B A 1887

GENERAL BULLETIN

MICHIGAN BANKERS ASSOCIATION

Lansing 16

Executive Manager

RALPH L. STICKLE

1502 Bank of Lansing Building

Telephone IVanhoe 2-0679

No. 2407

April 7, 1960

THE QUESTION OF TAX EQUALITY

In a letter dated March 31, 1960, Mr. Howard J. Stoddard has solicited your assistance in the efforts of the Michigan National Bank to invalidate the Michigan Intangibles Tax insofar as it applies to national banks.

The Michigan National Bank commenced its suit in the State Court of Claims which resulted in a decision sustaining the tax. On appeal to the Michigan Supreme Court, the decision of the Court of Claims was affirmed. The Michigan National Bank has indicated its intention of taking a further appeal to the United States Supreme Court and in this connection has invited the assistance of all Michigan banks. In doing so, however, Mr. Stoddard requests that the Michigan Bankers Association reverse its position on the Intangibles Tax.

The Executive Committee of your Association feels that in addition to the information contained in the Association's Legal Bulletin of July 2, 1959, a further explanation of the position of the Association should be made.

Back in 1952, when the challenged portion of the Act was being considered, the Taxation Committee of the Association was working with the Taxation Committee of the Legislature in an attempt to devise a new tax law which would raise additional revenue but would be reasonably fair to all banks, both state and national banks. There is no record that the Michigan National Bank made any effort to oppose the enactment of the legislation which resulted from the joint efforts of these committees.

At that time there were many problems which faced the Taxation Committee but the chief problem was how to tax national banks at the same rate as state banks, and still not have the law declared invalid under the limitations of the National Bank Act.

The Legislature was considering an income tax for banks because some felt that there was less danger of an income tax being held invalid in view of precedents

from other states. The Taxation Committee of the Association was opposed to such a special income tax levied by the State of Michigan on banks alone and finally prevailed on the Legislature to put banks under the Intangibles Tax Act.

In doing this, the Legislature requested and received the assurance of the Association that if the validity of the new tax was questioned by any national bank (no state bank could raise this question), the Association would make every reasonable effort to support the State of Michigan in upholding the Act. Accordingly, in fulfillment of its obligation, when the Michigan National Bank brought its suit, the Association filed a brief as amicus curiae in the lower court supporting the validity of the Act.

So far as the State tax system is concerned, the position of the Association ever since 1952 has been as quoted in Mr. Stoddard's letter. The Association has felt that the tax was easy to administer, that it was reasonable in amount, that it was more desirable in form than a special tax on income, that it taxed national banks as much as state banks, and that it taxed savings and loan associations substantially as much as banks. The fact that savings and loan associations, in addition to the Intangibles Tax, must pay franchise taxes and personal property taxes (from which taxes banks are exempt) must be considered an equalizing factor used by the Legislature to establish practical equality of the total tax burden imposed on these two types of financial institutions.

The Michigan National Bank does not agree that the State taxes savings and loan associations as much as banks, but that is because the Michigan National takes the position that in measuring the burden of the tax on

the two different institutions, bank deposits should be ignored and the tax burden should be measured merely against the bank's stock, surplus and undivided profits.

On this basis of measurement the tax burden is not equal. However, both the lower court and the Supreme Court refused this measurement basis and held that the tax burden of all taxes should be measured by the **total assets** of both institutions which, of course, would include bank deposits. Measured in this way, the court found that the ratio of state and local taxes to total assets was .089 for savings and loan associations as compared to .091 for the Michigan National Bank. On these facts the Supreme Court said:

"The record establishes that there was practical equality of the total tax imposed upon building and loan associations and upon national banks . . ."

This is the exact position taken by your Association from the very beginning.

In addition, your Association has felt that it would be unwise to have the tax system overthrown because it would mean that national banks, but not state banks, would escape State taxation until a new tax could be devised, and that in all probability any new tax would necessarily take the form of a special income tax on banks.

MICHIGAN BANKERS ASSOCIATION

By Direction of the
Executive Committee

**AFFIDAVIT OF W. O. HALL, CASHIER OF THE
FARMERS BANK OF MASON**

STATE OF MICHIGAN }
COUNTY OF INGHAM } ss.

W. O. Hall, being first duly sworn, deposes and says:

1. That he is the Cashier of The Farmers Bank of Mason, which is located in Mason, Michigan.

2. That on November 15, 1960, Mr. Miles Grant, Vice-President and Cashier of the Michigan National Bank, accompanied by a man not known to affiant, called on affiant with documents, being the same as attached to appellee's motion to dismiss certain moving parties' motion of sixty-eight banks in Michigan for leave to file the attached brief as amici curiae and brief as amici curiae, and advised him that the bank could join as amicus curiae without paying any attorney fees.

3. That Mr. Miles Grant requested that affiant, with no expense to his bank, sign the authority for Howlett, Hartman and Beier to add the name of The Farmers Bank of Mason to that of the Community National Bank of Pontiac and others joining in a brief amicus curiae in the United States Supreme Court, No. 155.

4. That from time to time he had received letters from the Michigan National Bank concerning the Mason Bill pending in the United States Congress and that he thought the authority requested concerned the Mason Bill. Also that he did not realize that the said authority concerned itself with the personal law suit of Michigan National Bank.

5. That the appellant's representatives did not talk about Michigan intangibles taxes and that he was not and is not aware of the position of the Michigan Bankers Association in this cause.

6. That he thus inadvertently signed the authority and handed it back to Mr. Miles Grant at the time of his visit on November 15, 1960, without discussing the matter with the Board of Directors.

7. That deponent does not have knowledge of the difference in the tax treatment imposed by the state of Michigan on savings and loan associations and those imposed on banks.

8. That he does not have any opinion as to whether Act No. 9, Michigan PA 1953, discriminates against national or state banks.

9. That he is not aware of the position taken by the Michigan Bankers Association, of which he is a member.

10. That as of this date he has not seen nor has he received a copy of the motion for leave to file a brief as amici curiae, nor the brief amici curiae filed in the United States Supreme Court, October Term, No. 155.

11. Finally, that he wishes to withdraw The Farmers Bank of Mason as a moving party from the motion and brief filed in No. 155.

Further deponent sayeth not.

W. O. Hall—Cashier
The Farmers Bank of Mason

Subscribed and sworn to before me a Notary Public this
7th Day of December, A. D. 1960.

Mary Smith

Notary Public, Ingham County,
Michigan

My Commission Expires
July 30, 1961

**AFFIDAVIT OF C. L. JENKINS ASSISTANT
VICE-PRESIDENT OF THE STATE BANK
OF ST. JOHNS**

STATE OF MICHIGAN }
COUNTY OF CLINTON } ss.

C. L. Jenkins, being first duly sworn, deposes and says:

1. That he is an Assistant Vice-President of The State Bank of St. Johns, which is located at St. Johns, Michigan.

2. That on November 17, 1960, Mr. Miles Grant, Vice-President and Cashier of the Michigan National Bank, accompanied by a man who was introduced as being the Michigan National Bank's attorney, left documents with him, being the same as attached to appellee's motion to dismiss certain moving parties' motion of sixty-eight banks in Michigan for leave to file the attached brief as amici curiae and brief amici curiae, and advised him that the bank could join as amicus curiae without paying any attorney fees.

3. That on November 18, 1960, he informed the Executive Vice-President, Mr. L. W. Wolf, of the visit to the bank of representatives of appellant bank during his absence and gave Mr. Wolf the documents left by them.

Further deponent sayeth not.

C. L. JENKINS

Assistant Vice-President

Subscribed and sworn to before me a Notary Public on
this 6th day of December, A. D. 1960.

ARDEN J. COOK

Notary Public, Clinton County,
Michigan

My Commission Expires
Sept. 5, 1961

**AFFIDAVIT OF L. W. WOLF EXECUTIVE VICE-
PRESIDENT OF THE STATE BANK
OF ST. JOHNS**

STATE OF MICHIGAN }
COUNTY OF CLINTON } ss.

L. W. Wolf, being first duly sworn, deposes and says:

1. That he is the Executive Vice-President of The State Bank of St. Johns, which is located at St. Johns, Michigan.

2. That on November 17, 1960, Mr. Miles Grant, Vice-President and Cashier of the Michigan National Bank, accompanied by a man who was introduced as being the Michigan National Bank's attorney, left documents, being the same as attached to appellee's motion to dismiss certain moving parties' motion of sixty-eight banks in Michigan for

leave to file the attached brief as amici curiae and brief amici curiae, with Mr. C. L. Jenkins, Assistant Vice-President of The State Bank of St. Johns.

3. That upon deponent's return to the bank on November 18, 1960, Mr. C. L. Jenkins gave him the documents left by representatives of appellant bank and that Mr. Jenkins advised him that the bank could join as amicus curiae without paying any attorney fees, and that deponent signed the authorization to add the name of The State Bank of St. Johns as a moving party to that of the Community National Bank of Pontiac and other banks joining in a brief amici curiae in the United States Supreme Court, No. 155.

4. That he returned such documents by mail, on or about November 19, 1960, without discussing the subject matter or the documents with the Board of Directors.

5. That he has never read the brief of either party in the case presently pending before the United States Supreme Court, being No. 155; he has not read the briefs in nor the opinions of the Michigan Supreme Court or the Court of Claims concerning the same matter; and, in like manner, deponent has not read the records therein nor has he ever attended any of the hearings in this cause.

6. That deponent has no knowledge of the difference in the tax treatment rendered savings and loan associations or banks by the state of Michigan.

7. That he does not have any opinion as to whether Act No. 9, Michigan PA 1953, discriminates against national or state banks.

8. That as of this date he has not seen nor has he received a copy of the motion for leave to file a brief as amici

curiae, nor the brief amici curiae filed in the United States Supreme Court, No. 155.

9. That he wishes to withdraw The State Bank of St. Johns as a moving party to the motion and brief filed in No. 155.

Further deponent sayeth not.

L. W. WOLF
Executive Vice-President

Subscribed and sworn to before me a Notary Public, this
6th day of December, A. D. 1960.

ARDEN J. COOK
Notary Public, Clinton County,
Michigan
My Commission Expires
September 5, 1961.

CERTIFICATE OF SERVICE

I hereby certify that copies of the aforesaid Objections to and Motion to Dismiss Motion of Sixty-Eight Banks in Michigan for Leave to File a Brief as Amici Curiae and Brief Amici Curiae have been served, by depositing the same in the United States mails, with first class air mail postage prepaid, upon the following counsel:

THOMAS G. LONG
VICTOR W. KLEIN
PHILIP T. VAN ZILE, II
HAROLD A. RUEMENAPP
1881 First National Building
Detroit 26, Michigan
Attorneys for Appellant and
Intervening Plaintiffs

DEAN G. BEIER
JAMES L. HOWLETT
1001 Pontiac State Bank Building
Pontiac, Michigan
Attorneys for the Applicant
Michigan Banks

On this _____ day of
December, A.D., 1960.

William D. Dexter
Assistant Attorney General

FILE COPY

Office-Supreme Court, U.S.

FILED

DEC 13 1960

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 155

JAMES R. DOWNING, Clerk

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN), COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

OBJECTIONS OF THE STATE OF MICHIGAN TO MOTION OF THE FRANKLIN NATIONAL BANK OF LONG ISLAND FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF AS AMICUS CURIAE

PAUL L. ADAMS,
ATTORNEY GENERAL,
STATE OF MICHIGAN

Samuel J. Torina
Solicitor General

T. Carl Holbrook

William D. Dexter

Assistants Attorney General
For Appellees

Business Address:

The Capitol

Lansing, Michigan

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST NATIONAL BANK (THREE RIVERS, MICHIGAN), COMMERCIAL NATIONAL BANK OF MOUNTAIN, THE NATIONAL BANK OF JACKSON, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF KALAMAZOO, banking associations organized under the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE OF THE STATE OF MICHIGAN, and LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

OBJECTIONS OF THE STATE OF MICHIGAN TO MOTION OF THE FRANKLIN NATIONAL BANK OF LONG ISLAND FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF AS AMICUS CURIAE

Pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States, appellees move that the Motion of The Franklin National Bank of Long Island for Leave to File a Brief as Amicus Curiae and Brief Amicus Curiae

[hereinafter referred to as the "Motion"] be denied for the following reasons, to-wit:

1. As stated on page 27 of appellees' brief filed in this cause, the above-captioned matter involves:

"Is Act 9, Michigan Public Acts of 1953, [hereinafter referred to as Act 9]^[1] which imposed for the year 1952 a tax of 5½ mills on national bank shares, invalid under § 5219^[2] because the Michigan legislature has not treated a savings share account of a savings and loan association as being equivalent to a share of national bank stock (measured by capital account), when the national bank loans a portion of its deposit money on residential properties and the savings and loan associations employ their mutual share account moneys for the same general purpose?"

2. The New York case referred to in the Motion^[3] could not possibly involve any issues in common with this cause, since it is not a tax case and in no way directly or indirectly, involves interpretation or application of the restrictions of § 5219 to a state's power to tax national bank shares.

[1]

Michigan Compiled Laws § 205.132a; Michigan Statutes Annotated '59 Cumulative Supplement (Henderson) § 7.556(2a).

[2]

12 U.S.C., Section 548; 13 Stat. 111, as amended by Stat. 34; 42 Stat. 1499; and 44 Stat. 223.

[3]

The Franklin National Bank of Long Island v. G. Russell Clark as Superintendent of Banks of the State of New York and others (New York County Clerk's Index No. 9734/1960)

3. The nature of the interest, if any, of The Franklin National Bank of Long Island is remote, indirect, and not germane; thus, their involvement in this case, as *amicus curiae*, would burden the State of Michigan and this Court with extraneous and unnecessary argument and would tend to confuse and distort the legal issue pending between the parties to this cause, without any foreseeable benefit.

4. Any involvement in this cause of The Franklin National Bank of Long Island, as *amicus curiae*, will undoubtedly require the additional involvement of the Attorney General of New York, as *amicus curiae*, and/or other counsel for the parties defendants, thus tending to convert this cause into a review by this Court — prior to final adjudication in the New York courts — of the issues sought to be adjudicated there.

5. An examination of the Jurisdictional Statement, Motion to Dismiss or to Affirm, and the Brief of Appellant Opposing Appellees' Motion to Dismiss or to Affirm, and the Brief of Appellant in this cause, clearly demonstrates that the parties are competent to and have adequately presented, to the extent material in this cause, the legal arguments referred to on page 3 of the Motion, and for this reason The Franklin National Bank of Long Island has not brought itself within the requirements of paragraphs enumerated 3 of Rule ⁴² of the Revised Rules of this Court.

The appellees in this cause have withheld their consent to the filing of a brief as *amicus curiae* of The Franklin National Bank of Long Island for the above reasons.

Wherefore, it is respectfully requested that this Court deny the Motion of The Franklin National Bank of Long

Island for Leave to File a Brief as Amicus Curiae and Brief
as Amicus-Curiae in this cause.

Respectfully submitted,

PAUL L. ADAMS,
ATTORNEY GENERAL,
STATE OF MICHIGAN

Samuel J. Torina
Solicitor General

T. Carl Holbrook
William D. Dexter

Assistants Attorney General
For Appellees

Business Address:
The Capitol
Lansing, Michigan

CERTIFICATE OF SERVICE

I hereby certify that copies of the aforesaid Objections to ~~Motion of The Franklin National Bank of Long Island~~ to File a Brief as Amicus Curiae and Brief as Amicus Curiae have been served, by depositing the same in the United States mails, with first class air mail postage prepaid, upon the following counsel:

**THOMAS G. LONG
VICTOR W. KLEIN
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HAROLD A. RUEMENAPP**

1881 First National Building
Detroit 26, Michigan

Attorneys for Appellant and
Intervening Plaintiffs

HOWARD HILTON SPELLMAN,
39 Broadway,
New York 6, New York

Attorney for The Franklin
National Bank of Long Island

On this _____ day of
December, A.D., 1960.

William D. Dexter
Assistant Attorney General

APPELLEE'S BRIEF

FILE COPY

FILED

DEC 16 1960

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 155

**MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,
Appellant,**

**NATIONAL BANK OF WYANDOTTE, THE FIRST
NATIONAL BANK (THREE RIVERS, MICHIGAN),
COMMERCIAL NATIONAL BANK OF IRON MOUN-
TAIN, THE NATIONAL BANK OF JACKSON, and
THE FIRST NATIONAL BANK AND TRUST COM-
PANY OF KALAMAZOO, banking associations organized
under the laws of the United States,**

Intervening Plaintiffs,

vs.

**STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and LOUIS M. NIMS,
STATE COMMISSIONER OF REVENUE,**

Appellees.

**ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN**

APPELLEES' BRIEF

**PAUL L. ADAMS
ATTORNEY GENERAL**

Samuel J. Torina

Solicitor General

T. Carl Holbrook

William D. Dexter

Assistants Attorney General

For Appellees

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Lansing, Michigan

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

**NATIONAL BANK OF WYANDOTTE, THE FIRST
NATIONAL BANK (THREE RIVERS, MICHIGAN),
COMMERCIAL NATIONAL BANK OF IRON MOUN-
TAIN, THE NATIONAL BANK OF JACKSON, and THE
FIRST NATIONAL BANK AND TRUST COMPANY OF
KALAMAZOO**, banking associations organized under the
laws of the United States,

Intervening Plaintiffs,

vs.

**STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and LOUIS M. NIMS,
STATE COMMISSIONER OF REVENUE,**

Appellees.

**ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN**

APPELLEES' BRIEF^(*)

STATUTES INVOLVED

Appellant takes too narrow a view of the statutes in-
volved. It ignores the federal statutes pertaining to the

[*]

Unless otherwise indicated, the use of the present tense refers to
the calendar year 1952, numbers in parentheses preceded by "R."
refer to pages in the printed record, and numbers preceded by "Br."
refer to pages of the appellant's brief.

creation, regulation, taxation and protection of federal and state savings and loan associations.^[11] It ignores the statutory pattern adopted by the State of Michigan for, the incorporation, regulation and control of Michigan savings and loan associations and the rationale of the Michigan tax structure pertaining to such associations, banking and trust institutions and all other financial institutions. It ignores congressional treatment of other alleged blocks of moneyed capital that could be urged to be in "substantial competition" with the appellant in the same sense that it alleges that savings and loan association savings share accounts are in such competition.

Below, appellees shall refer in concise form to relevant statutory provisions.

A. THE MICHIGAN TAX SYSTEM AS RELATED TO FINANCIAL BUSINESS

(1) The Taxation of Intangible Property in Michigan

Prior to the enactment of the Intangibles Tax Act in 1939, bank shares were taxed pursuant to a statutory formula under the ad valorem tax law, which covered all real and personal property in Michigan.^[12]

[11]

Federal statutes permit chartering of only those institutions known as "savings and loan associations." Michigan law permits organizing of both savings and loan and building and loan associations. Their functions are similar and both entities are herein termed "savings and loan associations."

[12]

Mich. Pub. Acts 1893, No. 206; Mich. Comp. Laws 1948, § 211.8(8); Mich. Stat. Ann. (Henderson) § 7.8(8).

By the enactment of the Intangibles Tax Act in 1939,^[3] bank shares were taxed in a manner similar to the shares of other financial institutions and corporations — at a rate of 6 per cent of the dividend income but not less than 1/10 of one per cent or more than 3/10 of one per cent per par, face or contributed value of the share.^[4]

Subsequent to the original enactment, amendments changed the rate as to bank shares, provided for the collection of the tax at the source.^[5]

Section 31^[6] of the statute as originally enacted exempted

“ . . .

“(11) Intangible personal property belonging to banks, building and loan associations, savings and loan associations and trust companies doing business in this state under whatever authority organized;

[3]

Mich. Pub. Acts 1939, No. 301; Mich. Comp. Laws 1948, § 205.131, et seq.; Mich. Stat. Ann. (Henderson) § 7.556(1), et seq.

[4]

The appellant paid the tax for the period in question, in the amount of \$18,500, without protest, measured by 3½ per cent of the dividends paid to its stockholders for the period (Pl. Ex. 1, R. 527a,

[5]

Mich. Pub. Acts 1939, No. 301, as amended by Mich. Pub. Acts 1941, No. 223, Mich. Pub. Acts 1945, No. 165, Mich. Pub. Acts 1947, No. 175, Mich. Pub. Acts 1949, No. 308, and Mich. Pub. Acts 1951, No. 76 and No. 246. For convenient reference, applicable provisions of this statute as in effect for the period in question are set out in Addendum “B” to this brief.

[6]

Mich. Comp. Laws 1948, § 205.133; Mich. Stat. Ann. (Henderson) § 7.556(3). [Subsection (15) does not appear in either the current Mich. Comp. Laws or Mich. Stat. Ann.]

• • •

“(12a) Intangible personal property belonging to credit unions doing business in this state under whatever authority organized;

• • •

“(15) Time, savings and demand deposits in banks up to the amount of \$3,000.00 for each taxpayer.”

In 1945, by Act 165, the imposition section of the intangibles tax statute^[7] was amended to impose “on shares of stock in building and loan or savings and loan associations” a tax of 1/25 of one per cent of the paid-in value of such shares, and on “moneys on hand or in transit or on deposit in a bank” a tax of 1/25 of one per cent.

As amended by Act 182 of the Michigan Public Acts of 1952, the Michigan Intangibles Tax Act imposed a tax measured by 3½ per cent of the income on income-producing intangible property such as bank shares and, in addition, imposed a 4 mill tax on the shares of national banking associations measured by the capital account (paid-in capital, surplus and undivided profits). No 4 mill tax was collected under the provisions of the amendatory language of Act 182 because the legislature was advised that to tax both the income from national bank shares and the shares violated § 5219^[8] of the Revised Statutes of the United

[7]

Mich. Comp. Laws 1948, § 205.132; Mich. Stat. Ann (Henderson) § 7,556(2).

[8]

Mar. 4, 1923, ch. 267, 42 Stat. 1499; Mar. 25, 1926, ch. 88, 44 Stat. 223; 12 U.S.C. § 548.

States (hereinafter referred to as § 5219), (quoted by the appellant in Appendix A), since the states are permitted to use only one method there permitted to the exclusion of other methods.

At the time the Legislature imposed the share tax of 4 mills on banks and trust companies by Act 182 of the Michigan Public Acts of 1952, it exempted, under Act 85 of the Michigan Public Acts of 1921,^[9] state banks and trust companies from payment of the annual franchise privilege fee.

The purpose of the 4 mill share tax on banks and trust companies under the Intangibles Tax Act was to bring the tax on national bank shares in line with the tax on state banks and other financial institutions, which in 1952 were paying a 4 mill tax on their paid-up capital and surplus under the general corporate privilege fee statute of Michigan.

Before the 4 mill intangibles tax on bank and trust company shares became due and payable, the Legislature in 1953 adopted Act 9, effective March 25 of that year, which is the statute in question here. Act 9 provided that for the calendar year 1952 and thereafter, the *exclusive* tax on all shares of banks and trust companies should be 5½ mills per dollar, measured by the capital, surplus and undivided profits represented by each share of the common stock for such year.^[10] The legislature under the Intangibles Tax Act

[9]

Mich. Pub. Acts 1921, No. 85, as amended by Mich. Pub. Acts 1952, No. 183; Mich. Comp. Laws § 450.301, et seq.; Mich. Stat. Ann. (Henderson) § 21.201, et seq.

[10]

Mich. Pub. Acts 1953, No. 9 is set forth verbatim in Appendix "B" to appellant's brief.

treated bank deposits, cash and savings and loan associations savings share accounts as equivalent. This species of intangible property was taxed at 1/25 of one per cent.

(2) Other Taxes Imposed in Michigan on Financial Businesses

In addition to the 1/25 of one per cent intangibles tax on savings and loan associations share accounts, in 1952, federal and state savings and loan associations were subject to an initial fee on authorized capital at the time of organization, admission or change of capital structure. Foreign corporations doing business in Michigan were also subject to a tax on their authorized capital stock, determined in accordance with a statutory apportionment formula.^[11] State associations in 1952 also paid an annual corporate privilege fee of 1/4 mill on each dollar of paid-in capital and legal reserve, with a nominal filing fee.^[12] Through a series of amendments, in 1954 the federal associations were then subject to the same fees and taxes as were state and foreign corporations in 1952.^[13] Building and loan asso-

[11]

Mich. Pub. Acts 1921, No. 85, as amended by Mich. Pub. Acts 1952, No. 183; Mich. Comp. Laws § 450.303; Mich. Stat. Ann. (Henderson) § 21.203. [As so amended, this section does not appear in either the current Mich. Comp. Laws or Mich. Stat. Ann.] For convenient reference, applicable provisions of the general corporation fee statute as in effect for the period in question are set out in Addendum "B" to this brief.

[12]

Domestic and foreign savings and loan associations have always been subject to the annual corporate privilege fee. Act 85, Mich. Pub. Acts 1921, in § 4-a [Mich. Comp. Laws § 450.304a; Mich. Stat. Ann. (Henderson) § 21.206], required an annual privilege fee from such associations of 1 mill upon each dollar of paid-in capital and reserve, but not in excess of \$2,000.

ciations doing business in Michigan further were required to pay an annual examination fee of 1/100 of 1 per cent of the gross amount of assets, subject to a minimum fee of \$50.[14]

Savings share certificates and mortgages held by building and loan associations were subject to taxation from 1887 to 1889 under the general tax law of 1885, and have been exempt since 1889 by virtue of Act 124, Mich. Pub. Acts 1889, which added § 17 to Act 50, Mich. Pub. Acts 1887.

All financial businesses (individuals, partnerships, corporations) holding tangible personal property and real prop-

[13]

Mich. Pub. Acts 1952, No. 183; Mich. Comp. Laws § 450.303, et seq.; Mich. Stat. Ann. (Henderson) § 21.203, et seq.

By Mich. Pub. Acts 1954, No. 144 [Mich. Comp. Laws (Mason's 1956 Supp.) § 450.303, et seq.; Mich. Stat. Ann. (Henderson) § 21.203, et seq.], the legislature repealed the franchise and privilege taxes imposed on foreign and domestic building and loan associations.

By Mich. Pub. Acts 1954, No. 157 [Mich. Comp. Laws (Mason's 1956 Supp.) § 489.29; Mich. Stat. Ann. (Henderson) § 23.572], the Legislature imposed a privilege tax on domestic building and loan associations equal to 1/4 mill on the amount of capital and reserves, and a franchise tax equal to 1/10 mill on authorized capital.

By Mich. Pub. Acts 1954, No. 158 [Mich. Comp. Laws (Mason's 1956 Supp.) § 489.201, et seq.; Mich. Stat. Ann. (Henderson) § 23.591, et seq.], foreign and state building and loan associations were subject to a privilege tax equal to 1/4 mill on capital and reserves and a franchise tax equal to 1/10 mill on paid-in capital.

By Mich. Pub. Acts 1954, No. 180 [Mich. Comp. Laws (Mason's 1956 Supp.) § 489.371, et seq.; Mich. Stat. Ann. (Henderson) § 23.589(1), et seq.], federal savings and loan associations were subject to a privilege tax equal to 1/4 mill on capital and reserves.

[14]

Mich. Pub. Acts 1901, No. 17; Mich. Comp. Laws 1948, § 489.29; Mich. Stat. Ann. (Henderson) § 23.572.

erty in Michigan pay uniform ad valorem taxes^[15] (except banks and trust companies as to personalty)^[16], the amount of which is determined by the local rate.

Domestic insurance companies are subject to an annual tax of 5 mills, measured by capital, surplus and unassigned funds. The maximum tax is \$50,000.^[17] Foreign insurance companies pay premium taxes ranging from 2 per cent to 3 per cent on their gross premiums received from Michigan sources.^[18]

Federal and domestic credit unions are exempt from all taxation except real and tangible personal property taxes.

All financial businesses other than national banks are subject to miscellaneous state tax measures, including use tax on their purchases and sales tax on their sales, being of the nature that cannot be imposed upon national banking associations under the provisions of § 5219. In addition, all such corporate financial businesses except banks, trust companies and savings and loan associations

[15]

Mich. Pub. Acts 1893, No. 206; Mich. Comp. Laws 1948, § 211.1, et seq.; Mich. Stat. Ann. (Henderson) § 7.1, et seq.].

[16]

Mich. Pub. Acts 1949, No. 261; Mich. Comp. Laws § 211.9 [As so amended, this section does not appear in the current volumes]; Mich. Stat. Ann. (Henderson) § 7.9.

[17]

Mich. Pub. Acts 1952, No. 180; Mich. Comp. Laws § 505.1; Mich. Stat. Ann. (Henderson) § 24.64(1) [This section does not appear in either the current Mich. Comp. Laws or Mich. Stat. Ann.].

[18]

Mich. Pub. Acts 1923, No. 91; Mich. Comp. Laws 1948, § 512.17; Mich. Stat. Ann. (Henderson) § 24.105 [This section does not appear in the current Mich. Stat. Ann.].

are subject to the 4 mill tax on paid-in capital and surplus, imposed by Act 85, Mich. Pub. Acts 1921.^[19]

B. MICHIGAN SAVINGS AND LOAN ASSOCIATIONS LEGISLATION

The state associations here under attack were created and are regulated and controlled by Act 50 of the Michigan Public Acts of 1887,^[20] as amended. Section 1^[21] reads in part:

"A building and loan association, as contemplated by this act, is any association or corporation heretofore or hereafter organized or incorporated under any building and loan association law for the purpose of acquiring, building and improving homesteads, removing incumbrances therefrom, accumulating money to be loaned to its members or as hereinafter provided, or assisting its members to accumulate and invest their savings, and which association accumulates the funds thus loaned or otherwise invested, in part, through the issuance or sale of its own stock or shares. . . ."

Section 2^[22] provides, in part, for the filing of articles

[19]

Mich. Comp. Laws § 450.301, et seq.; Mich. Stat. Ann. (Henderson) § 21.201, et seq.

[20]

Mich. Comp. Laws § 489.1, et seq.; Mich. Stat. Ann. (Henderson) § 23.541, et seq.

[21]

Mich. Comp. Laws 1948 § 489.1; Mich. Stat. Ann. (Henderson) § 23.541 [This language does not appear in the current Mich. Stat. Ann.].

[22]

Mich. Comp. Laws 1948, § 489.2; Mich. Stat. Ann. (Henderson) § 23.542 [This language does not appear in the current Mich. Stat. Ann.].

of association with the secretary of state and provides that

“ * * * the secretary of state may refuse to record such articles if he has reason to believe that the proposed corporation is to be formed for any other than legitimate building and loan business, * * * ”

Said section further provides for the adoption of by-laws by the association but requires the secretary of state to approve such by-laws before they are operative.

Section 5[23] provides for the issuance of savings shares, including the following classes: installment savings shares, optional savings shares, advanced payment shares, fully paid shares, and reserve shares. Reserve shares are akin to a stock interest and were limited in gross amount and to a percentage of the assets of such association.[24]

Section 6[25] provides for the withdrawal of unpledged shares and provides

“ * * * That the rate of earnings paid on withdrawals shall not exceed the rate of net earnings of the association: * * * ”

[23]

Mich. Comp. Laws 1948, § 489.5; Mich. Stat. Ann (Henderson) § 23.545.

[24]

Only one association in Michigan, namely, Central Savings and Loan Association of Detroit, has any reserve shares. The statute no longer provides for reserve shares (Act No. 148, Michigan Public Acts of 1958).

[25]

Mich. Comp. Laws 1948, § 489.6; Mich. Stat. Ann (Henderson) § 23.546.

Section 81^[26] requires that

“ * * * No loans shall be made by such association to anyone not a member thereof (except as hereinafter provided in section 33 of this act).

“Borrowers shall be required to make application for membership. * * *. All borrowers and contract purchasers from an association shall be members of the association and shall be issued certificates evidencing such membership, * * *. At all meetings of the members of the association each borrowing or otherwise obligated member shall be entitled to 1 vote either in person or by proxy for each such obligation. * * *”

Section 8a^[27] permits an association to invest funds in federal home owners' loan act bonds, and Sec. 8b^[28] permits the association to loan to those eligible for a loan by the “servicemen's readjustment act of 1944.”

Section 11^[29] refers to the associations organized under the act as “being of the nature of cooperative associations.”

[26]

Mich. Comp. Laws 1948, § 489.8; Mich. Stat. Ann. (Henderson) § 23.548.

[27]

Mich. Comp. Laws 1948, § 489.8a; Mich. Stat. Ann. (Henderson) § 23.549.

[28]

Mich. Comp. Laws 1948, § 489.8b; Mich. Stat. Ann. (Henderson) § 23.549(1).

[29]

Mich. Comp. Laws 1948, § 489.11; Mich. Stat. Ann. (Henderson) § 23.552.

Section 16[30] provides in lieu of the homestead exemption that the shares held by any member in the amount of \$1,000 shall not be subject to levy and sale on execution or attachment.

• Section 24[31] provides for the determination of gross earnings at least once each year and requires 5 per cent of the gross earnings, after all expenses, to be placed in a legal reserve together with any full paid reserve shares until the legal reserve reaches 10 per cent of the association's liability to shareholders. Said section then requires that the residue of the earnings (after legal reserve and expense deductions)

“ • • • shall be transferred to an undivided profit account and apportioned to the credit of shareholders as the association in its by-laws shall determine: Provided further, That after the aforesaid apportionment has been made, the balance in the undivided profit account shall not at any time exceed 5 per cent of the total assets of the association. • • • ”

Section 24a[32] permits one association to transfer its assets to any other association; section 25[33] permits con-

[30]

Mich. Comp. Laws 1948, § 489.16; Mich. Stat. Ann. (Henderson) § 23.557.

[31]

Mich. Comp. Laws 1948, § 489.24; Mich. Stat. Ann. (Henderson) § 23.565.

[32]

Mich. Comp. Laws 1948, § 489.24a; Mich. Stat. Ann. (Henderson) § 23.566.

[33]

Mich. Comp. Laws 1948, § 489.25; Mich. Stat. Ann. (Henderson) § 23.567.

solidation; and section 36[31] permits an association to invest in government bonds, state, federal and local bonds; and interest bearing obligations of the federal home-loan bank system and the federal savings and loan insurance corporation. An association is permitted to purchase shares, either by cash or transfer of assets, and become a member of any federal savings and loan association or of any corporation organized under the laws of the United States that permits the ownership of stock and membership therein by building and loan associations. Such association can obtain or terminate the insurance protection provided by title 4 of an act of Congress known as the "national housing act."

Section 37[35] provides:

"No building and loan association shall, directly or indirectly, do a banking business, or advertise for or accept deposits. Any advertisement or any offer to accept or receive deposits with or without the promise to pay interest thereon, shall be prima facie evidence of a violation of this provision."

Section 38[36] allows any Michigan association to consolidate with or be converted into a federal savings and loan association.

[34]

Mich. Comp. Laws 1948, § 489.36; Mich. Stat. Ann. (Henderson) § 23.579.

[35]

Mich. Comp. Laws 1948, § 489.37; Mich. Stat. Ann. (Henderson) § 23.580.

[36]

Mich. Comp. Laws 1948, § 489.38; Mich. Stat. Ann. (Henderson) § 23.581.

Section 39[37] permits any association to organize a new federal savings and loan association.

Section 40[38] permits any federal savings and loan association to be consolidated with or be converted into a state chartered association.

The pattern of these statutory provisions would indicate that the Michigan savings and loan associations, and those admitted to do business in this State as foreign associations, are created and regulated as mutual thrift institutions for the advancement of thrift savings and home ownership.[39]

C. THE HOME OWNERS LOAN ACT OF 1933[40]

The statutory pattern relating to federal savings and loan associations is not unlike that pertaining to the Michigan associations. Appellant claims no material difference between the two. The Congress, in 1933, passed what is known as the "Home Owners Loan Act of 1933".

By that act, Congress for the first time authorized the

[37]

Mich. Comp. Laws 1948, § 489.30; Mich. Stat. Ann. (Henderson) § 23.582.

[38]

Mich. Comp. Laws 1948, § 489.40; Mich. Stat. Ann. (Henderson) § 23.583.

[39]

As found by the trial court:

"The Michigan Act has not been substantially changed since its adoption in 1887. * * * It has been amended to make it compatible with the Federal 1933 Statute. * * *" (R. 105a)

[40]

June 13, 1933, ch. 64, § 1, 48 Stat. 128; 12 U.S.C. 1461, et seq.

organization of Federal Savings and Loan Associations and defined their purpose in these words:

"In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board [Federal Home Loan Bank Board] is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal Savings and Loan Associations, and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States. (Section 1464(a))

"Such associations shall raise their capital only in the form of payments on such shares as are authorized in their charter, which shares may be retired as is therein provided. No deposits shall be accepted and no certificates of indebtedness shall be issued except for such borrowed money as may be authorized by regulations of the Board. (Section 1464(b))

"Such associations shall lend their funds only on the security of their shares or on the security of first liens upon homes or combination of homes and business property within fifty miles of their home office: * * *." [Bracketed material added] (Section 1464(c)) [41]

In subdivision (g), the act authorizes the Secretary of

[41]

June 13, 1933, ch. 64, § 5, 48 Stat. 132; as last amended Sept. 2, 1958, Pub. L. 85-857, § 13 (f), 72 Stat. 1264; 12 U.S.C. 1464, subsections (a), (b) and (c).

the Treasury to subscribe for preferred stock in such associations and by subdivision (j) to invest in full paid income shares of the associations.[42]

Section 1465 provides:

"To enable the Board to encourage local thrift and local home financing and to promote, organize, and develop the associations herein provided for or similar associations organized under local laws, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$150,000, to be immediately available and remain available until expended, subject to the call of the Board, which sum, or so much thereof as may be necessary, the Board is authorized to use in its discretion for the accomplishment of the purposes of this section without regard to the provisions of any other law governing the expenditure of public funds. For the purposes of this section the Secretary of the Treasury is authorized and directed to allocate and make immediately available to the Board, out of the funds appropriated pursuant to section 1464(g) of this title, the sum of \$700,000. Such sum shall be in addition to the funds appropriated pursuant to this section, and shall be subject to the call of the Board and shall remain available until expended. The sums appropriated and made available pursuant to this section shall be used impartially in the promotion and development of local thrift and home-financing institutions, whether State or Federally chartered." (June 13, 1933, ch. 64, § 6, 48 Stat. 134; as last amended May 28, 1935, ch. 150, § 19, 49 Stat. 297.)

[42]

Ibid., subsections (g) and (j).

And in section 1464(h) Congress dealt specifically with the taxation of such associations in this language:

"Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions." (June 13, 1933, ch. 64, § 5, 48 Stat. 132; as last amended Sept. 2, 1958, Pub. L. 85-837, § 13 (f), 72 Stat. 1264.)

D. ADDITIONAL FEDERAL LEGISLATION PERTAINING TO MUTUAL THRIFT INSTITUTIONS

The creation of and function performed by savings and loan associations, both state and federal, are closely related to other federal legislation in the field of home financing and thrift savings.

As part of the land bank system established by Congress, in addition to federal savings and loan associations, Con-

gress permitted the creation of national farm-loan associations.^[143] Such associations are permitted to receive funds from the federal land bank,^[144] and are permitted to make loans to their members.^[145] Borrowers are required to subscribe to shares of stock in such farm-loan associations in the amount of 5 per cent of the amount of the desired loan.^[146] Such associations are exempt from federal, state, municipal and local taxation, except taxes upon real estate held, purchased, or taken by the associations.^[147]

Another such institution is the *Federal Farm Mortgage Corporation*,^[148] whose present duties are discharged by the *Farm Credit Administration*.^[149] The mortgages executed or held by such corporation are deemed held by a United States Government instrumentality and are exempt from taxation.^[150] The United States Government is required to furnish the capital of this corporation as deemed

[143].

July 17, 1916, ch. 245, title I, § 1, 39 Stat. 360; as last amended by Ex. Ord. No. 6084, Mar. 27, 1933; 12 U.S.C. 641, et seq. Also July 17, 1916, ch. 245, title I, § 7, 39 Stat. 665; 12 U.S.C. 711.

[144]

July 17, 1916, ch. 245, title I, § 7, 39 Stat. 365; 12 U.S.C. 720.

[145]

July 17, 1916, ch. 245, title I, § 8, 39 Stat. 367; 12 U.S.C. 733. Also July 17, 1916, ch. 245, title I, § 9, 39 Stat. 368; Ex. Ord. No. 6084, Mar. 27, 1933; 12 U.S.C. 741.

[146]

July 17, 1916, ch. 245, title I, § 8, 39 Stat. 367; 12 U.S.C. 733.

[147]

July 17, 1916, ch. 245, title I, § 26, 39 Stat. 380; 12 U.S.C. 931.

[148]

Jan. 31, 1934, ch. 7, § 1, 48 Stat. 344; 12 U.S.C. 1020, et seq.

[149]

May 12, 1933, ch. 25, title II, § 40, 48 Stat. 51; 12 U.S.C. 636, et seq.

[150]

Jan. 31, 1934, ch. 7, § 12, 48 Stat. 347; Feb. 26, 1934, ch. 33, 48 Stat. 360; 12 U.S.C. 1020f.

necessary by its board of directors, up to \$200 million.^[51] Bonds issued, with the approval of the secretary of the treasury, by such corporation are guaranteed by the United States in the amount of \$2 billion.^[52] This but illustrates the pronounced congressional policy in the farm mortgage field.

Other comparable legislation in the home mortgage field is contained in the National Housing Act^[53] by various guarantee, insurance and finance features.

For example, the *Federal National Mortgage Association*^[54] is empowered to purchase various V.A. or F.H.A. mortgages, with the obvious purpose of furthering home ownership and financing. True to the pattern involved in the Federal Farm Mortgage Corporation and federal savings and loan statutes, the secretary of the treasury of the United States may purchase preferred stock of such associations in a substantial amount.^[55] These associations are exempt from taxation.^[56]

[51]

Jan. 31, 1934, ch. 7, § 3, 48 Stat. 345; as last amended July 12, 1946, ch. 570, § 2, 60 Stat. 532; 12 U.S.C. 1020b.

[52]

Jan. 31, 1934, ch. 7, § 4 (a), 48 Stat. 345; Apr. 27, 1934, ch. 168, § 14, 48 Stat. 647; 12 U.S.C. § 1020c.

[53]

June 27, 1934, ch. 847, 48 Stat. 1246; 12 U.S.C. 1701, et seq.

[54]

June 27, 1934, ch. 847, title III, § 301, 48 Stat. 1252; as last amended Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 612; 12 U.S.C. 1716, et seq.

[55]

June 27, 1934, ch. 847, title III, § 303, 48 Stat. 1254; as last amended July 12, 1957, Pub. L. 85-104, title II, §§ 201, 202, 71 Stat. 298; 12 U.S.C. 1718, subsections (d) and (e).

[56]

June 27, 1934, ch. 847, title III, § 309, as added Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 620; 12 U.S.C. 1723a, subsection (c).

To assure the successful achievement of the purposes of savings and loan associations and to provide mutual funds for home financing other than funds guaranteed or furnished by the United States Government, Congress created a *Federal Savings and Loan Insurance Corporation*.^[57] It thereby insured the share accounts of state and federal savings and loan associations, cooperative banks and homestead associations in a manner comparable to insurance of bank deposits by the *Federal Deposit Insurance Corporation*.^[58] Each deposit^[59] or share account^[60] is insured up to the amount of \$10,000. The initial insurance premium for banks is 1/12 of one per cent of net deposits^[61] and for savings and loan associations, 1/12 of one per cent of insured accounts and credit obligations.^[62] Membership in the *Federal Savings and Loan Insurance Corporation* is required of federal associations and is open to state building

[57]

June 27, 1934, ch. 847, title IV, § 401, 48 Stat. 1255; July 16, 1952, ch. 883, 66 Stat. 727; 12 U.S.C. 1724, et seq.

[58]

Sept. 21, 1950, ch. 967, § 2 [1], 64 Stat. 873; 12 U.S.C. 1811, et seq.

[59]

Sept. 21, 1950, ch. 967, § 2 [3], 64 Stat. 873; as last amended Aug. 1, 1956, ch. 852, § 3, 70 Stat. 908; 12 U.S.C. 1813, subsection (m).

[60]

June 27, 1934, ch. 847, title IV, § 405, 48 Stat. 1259; as last amended Aug. 2, 1954, ch. 649, title V, § 501 (2), 68 Stat. 633; 12 U.S.C. 1728, subsection (a).

[61]

Sept. 21, 1950, ch. 967, § 2 [7], 64 Stat. 876; 12 U.S.C. 1817, subsection (a).

[62]

June 27, 1934, ch. 847, title IV, § 404, 48 Stat. 1258; as last amended June 27, 1950, ch. 369, §§ 7, 8, 64 Stat. 259; 12 U.S.C. 1727, subsection (a).

and loan, savings and loan and homestead associations, as well as cooperative banks.[63]

The *Federal Savings and Loan Insurance Corporation* was to have an initial capital of \$100 million, to be subscribed for by the Home Owners Loan Corporation.[64] Money of the corporation must be deposited in the treasury of the United States or, upon the approval of the secretary of the treasury, in any federal reserve bank, or shall be invested in obligations of or guaranteed as to principal and interest by the United States. Upon designation by the secretary of the treasury, such corporation may be a depository or fiscal agent of the United States.[65]

As a miscellaneous footnote to this type of congressional involvement, Congress has stated:

"The Congress declares that it has been its intent since the enactment of the National Housing Act that housing built with the aid of mortgages insured under that Act is to be used principally for residential use; and that this intent excludes the use of such housing for transient or hotel purposes while such insurance on the mortgage remains outstanding." (June 27, 1934, c. 847, Title V, § 513, as added Aug. 2, 1954, c. 649, Title 1, § 132, 68 Stat. 610; 12 U.S.C.A. § 1731b(a).)

[63]

Sept. 21, 1950, ch. 967, § 2 [4], 64 Stat. 875; 12 U.S.C. 1814, subsection (b).

[64]

June 27, 1934, ch. 847, title IV, § 402, 48 Stat. 1256; as last amended Aug. 11, 1955, ch. 783, title I, § 109 (a) (3), 69 Stat. 640; 12 U.S.C. 1725, subsection (b).

[65]

Ibid., subsection (d).

The establishment of credit unions^[66] by Congress follows substantially the same pattern as that of the other federally created corporations heretofore referred to. A "Federal credit union" is defined in such legislation as "a cooperative association" organized

"* * * for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes. * * *" (June 26, 1934, ch. 750, § 2, 48 Stat. 1216; as last amended June 29, 1948, ch. 711, §§ 1, 2, 62 Stat. 1091; 12 U.S.C. § 1752.)

The provision relative to their taxation reads:

"The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority; except that any real property and any tangible personal property of such Federal credit unions shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. Nothing herein contained shall prevent holdings in any Federal credit union organized hereunder from being included in the valuation of the personal property of the owners or holders thereof in assessing taxes imposed by authority of the State or political subdivision thereof in which the Federal credit union is located: *Provided, however,* that the duty or burden of collecting or enforcing the payment of such tax shall not be imposed upon any

[66]

"Federal Credit Union Act." June 26, 1934, ch. 750, § 1, 48 Stat. 1216; 12 U.S.C. § 1751, et seq.

such Federal credit union and the tax shall not exceed the rate of taxes imposed upon holdings in domestic credit unions." (June 26, 1934, ch. 750, § 18, 48 Stat. 1222; Dec. 6, 1937, ch. 3, § 4, 51 Stat. 4; 12 U.S.C. § 1768.)

E. HISTORY OF SECTION 5219

It seems desirable to trace briefly the history of the federal statute from which springs the power of the several states to tax a national banking association or its shareholders.

The first federal statute granting to the several states the power to tax national banks was adopted by Congress on June 3, 1864.^[67] It empowered the states to tax the shares of national banks at a rate not higher than that imposed on other moneyed capital in the hands of individual citizens, nor higher than the rate on the shares of state banks.^[68] This Act permitted a state to tax the real estate of a national bank. It further required that the tax be imposed on shares at the location of the bank.

In 1868 Congress amended the Act^[69] to permit a state

[67]

"National Bank Act," June 3, 1864, ch. 106, § 41, 13 Stat. 111.

[68]

"The purpose of the restriction is to render it impossible for any State, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks, by favoring shareholders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking." *First National Bank of Guthrie Center v. Anderson, County Auditor, et al.*, (1926) 269 U.S. 341 347-348.

[69]

Feb. 10, 1868, ch. 7, 15 Stat. 34.

to determine and direct the manner and place of taxing the shares of national banks located within said state, except that the shares of any national bank owned by non-residents of a state were required to be taxed in the city or town in which the bank was located and not elsewhere. The 1868 amendment eliminated one test for the rate of taxation to be levied on national bank shares. The Act of 1864 had restricted the rate to that (1) on other moneyed capital and (2) on state banks. The amendment of 1868 retained only the moneyed capital test.

In 1878 Congress further amended the Act; but only slight changes in terminology resulted and the Act became at that time § 5219 of the Revised Statutes of the United States.

By further amendments to the Act, Congress, in 1923,^[70] while still allowing the states to tax the shares of national banks, also permitted them to impose an income tax on the bank, subject to certain restrictions, or to impose an income tax on the shareholders of the bank, subject to certain restrictions. Each state was then in a position to choose one, but only one, of three methods of taxing a national bank or its shareholders. At the same time Congress also amended the Act to provide that obligations in the hands of individual citizens, not engaged in the banking or investment business and representing merely personal investments not made in competition with such business, were not to be deemed "moneyed capital" within the purview of the Act.

The final amendment to the Act was made in 1926^[71]

[70]

Mar. 4, 1923, ch. 267, 42 Stat. 1499.

[71]

Mar. 25, 1926, ch. 88, 44 Stat. (Part 2) 223.

when Congress provided a fourth method for taxing national banks by allowing a state to impose a franchise tax on the bank, i.e., a tax measured by bank earnings. This amendment further made one exception to the rule that the four permitted methods of taxation are mutually exclusive in that it permitted any state imposing an income tax on the dividends of a bank shareholder also to impose upon the bank an income or franchise tax if it chose to do so.

F. CONGRESSIONAL TREATMENT OF OTHER BANKING INSTITUTIONS

(1) Joint-Stock Land Banks^[72] and National Farm-Loan Associations^[73]

Congress, in establishing joint-stock land banks (together with national farm-loan associations), again spelled out congressional involvement in the farm finance field. Congress provided for the tax exemption of national farm-loan associations, including the capital and reserve or surplus therein and the income derived therefrom, except for taxes upon real estate.^[74] It provided that the real property of joint-stock land banks and national farm-loan associations was subject to taxation as any other real property is taxed.^[75]

[72]

July 17, 1916, ch. 245, title I, § 16, 39 Stat. 374; 12 U.S.C. § 810, et seq.

[73]

July 17, 1916, ch. 245, title I, § 7, 39 Stat. 365; 12 U.S.C. § 711, et seq.

[74]

July 17, 1916, ch. 245, title I, § 26, 39 Stat. 380; 12 U.S.C. 931.

[75]

July 17, 1916, ch. 245, title I, § 26, 39 Stat. 380; 12 U.S.C. 933.

Congress provided for the taxation of joint-stock land bank shares in this language:

"Nothing in sections 931-933 of this title shall prevent the shares of any joint-stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in ~~any~~ manner and subject to the conditions and limitations contained in section 548 of this title with reference to the shares of national banking associations." (July 17, 1916, ch. 245, title I, § 26, 39 Stat. 380; 12 U.S.C. 932.)

(2) National Agricultural Credit Corporations^[76]

Any member bank of the federal reserve system may invest 10 per cent of its paid-in capital and surplus in the stock of one or more national agricultural credit corporations.^[77] Further, any agricultural or livestock financing corporation incorporated by special law of any state having sufficient unimpaired capital may, with the approval of the comptroller of the currency, become a National Agricultural Credit Corporation.^[78] These corporations are empowered to make advances upon, to discount, rediscount or purchase, and to sell or negotiate notes, drafts or bills of exchange and to accept drafts or bills of

[76]

Mar. 4, 1923, ch. 252, title II, § 201, 42 Stat. 1461; 12 U.S.C. 1151, et seq.

[77]

Mar. 4, 1923, ch. 252, title II, § 210, 42 Stat. 1469; 12 U.S.C. 1231.

[78]

Mar. 4, 1923, ch. 252, title II, § 213 (a), 42 Stat. 1469; 12 U.S.C. 1281.

exchange under certain prescribed conditions.^[79] Congress provided for their taxation as follows:

“Taxation by a State of the shares in National Agricultural Credit Corporations, or of dividends derived therefrom, or of the income of said corporations, or real estate owned by them, shall be such only as is or may be authorized by law in the case of national banking associations; and taxation by a State of the debentures or other obligations of such corporations shall not be at a higher rate than the rate applicable to other moneyed capital in the hands of individual citizens thereof.” (Mar. 4, 1923, ch. 252, title II, § 211, 42 Stat. 1469; 12 U.S.C. 1261.)

This statutory pattern shows that Congress did compare national banks with private stock corporations in the banking field for purposes of state taxation of the shares of these institutions but did not make this comparison in reference to mutual institutions. The former are taxed in consonance with § 5219 and the latter are not.

QUESTION PRESENTED

Is Act 9, Michigan Public Acts of 1953,^[80] which imposed for the year 1952 a tax of 5½ mills on national bank shares, invalid under § 5219 because the Michigan

[79]

Mar. 4, 1923, ch. 252, title II, § 203 (a), 42 Stat. 1462; Feb. 8, 1927, ch. 74, 44 Stat. 1059; 12 U.S.C. 1172, subsection (1).

[80]

Mich. Comp. Laws § 205.132a; Mich. Stat. Ann. '59 Cum. Supp. (Henderson) § 7.556(2a).

legislature has not treated a savings share account of a savings and loan association as being equivalent to a share of national bank stock (valued by the capital account), when the national bank loans a portion of its deposit money on residential properties and the savings and loan associations employ their mutual share account moneys for the same general purpose?^[81]

STATEMENT OF THE CASE

Appellees cannot accept the appellant's statement of the case. Appellant would lead this Court to believe that national banking associations have been singled out for special tax treatment, as distinguished from general corporations and others conducting financial businesses in Michigan. An examination of the tax structure of the state of Michigan, as it affects financial institutions, clearly disproves this contention.^[82]

Since the appellant has limited its case to alleged discriminatory treatment of savings and loan associations, it may be assumed that all financial businesses in Michigan, except such associations, are subject to state taxes equivalent to those imposed on appellant.

Thus, appellant's complaint is limited to alleged partial

⁶
[81]

Appellees cannot accept the appellant's "Questions Presented" (Br. 4-6). They are not properly framed either as to the findings of fact or conclusions of law of the Supreme Court of Michigan.

[82]

For a general discussion of Michigan's taxation of financial businesses, see Statutes Involved, pp 2-8.

preferential treatment of both federal and state chartered savings and loan associations, whose share accounts and total assets represent a relatively small but unknown portion of the total financial business in Michigan in 1952.

A. HISTORY OF THE RELATIONSHIP OF MICHIGAN BANKS TO ACT NO. 9, MICHIGAN PUBLIC ACTS OF 1953.

Because of the appellant's announced position in this cause that all it is seeking is "tax equality" with its competitors, and that Michigan is here charged with singling out bank shares for discriminatory taxation, the following background is deemed noteworthy.

The taxing statute here complained of, Act No. 9 of the Michigan Public Acts of 1953, in the language of the Michigan Bankers Association,

" . . . was conceived and sponsored by the Michigan Bankers Association through the Association's Taxation Committee. The membership of this committee was composed of a cross-section of Michigan banking, representing both national and state banks, and both large and small banks. Prior to the adoption of the present Intangibles Tax Law [the aforesaid Act 9], there existed a serious tax inequity between state and national banks. National banks were protected by Section 5219 of the National Banking Act which states that a State can tax a national bank by only one of four methods:

- (1) A tax on bank shares
- (2) A tax on the income on bank shares

- (3) A tax measured by bank income
- (4) An income tax on the bank.

State banks, on the other hand, are exposed to any tax which the Legislature may see fit to impose.

"In writing the present Intangibles Tax Law, the Legislature agreed to our proposal that all banks in the state should be taxed exactly alike and to accomplish this, gave state banks an exemption from the franchise tax which they had been paying. The Legislature further agreed that since national banks were protected by Section 5219 and therefore, could not be subject to other taxes which in the future might be imposed on business and industry in this State, both state and national banks in the future would be exempt from such tax proposals. On the assurance of the Association that we would help the State defend any attack on the legality of the tax, the Legislature enacted the statute as we proposed it. Subsequently, when the State adopted a business activities tax, the Legislature lived up to its agreement and exempted all banks from this tax. It is our firm conviction that the Association has a responsibility to the Legislature to live up to the agreement which was made at that time, especially in view of the fact that the Legislature has lived up to its agreement to impose only one tax on banks in this state, and to give state banks the same protection which national banks enjoy under Section 5219." *Legal Bulletin* No. 2395, dated July 2, 1959, of the Michigan Bankers Association, 1502 Bank of Lansing Building, Lansing 16, Michigan, pp 1-2.

This statement of the Michigan Bankers Association was in response to communications dated June 8, 1959, and

June 24, 1959, wherein Howard J. Stoddard, President of the Michigan National Bank (appellant herein), attempted to get the Michigan Bankers Association to reverse its position as stated in the amicus curiae brief of that Association filed in the trial court and quoted by the trial court in its opinion (R. 67a):

“The Michigan Bankers Association has followed the trial of this case and requested permission to file this brief because of its conviction that the present system of the State of Michigan for the taxation of banks is reasonable from the viewpoint of the public, equitable from the viewpoint of the competitors, and practical from the viewpoint of the banks themselves. Actual experience with the taxation system shows that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantage among the various types of institutions; and that it has proven to be simple to administer. Such a system is obviously desirable, and this Association, believing the system to be entirely legal within the limitations of the Federal Constitution and Statutes, does not want to see it destroyed.”

The Michigan Bankers Association further supports its position in the following language:

“• • • Furthermore, whether or not there is any favoritism shown them [savings and loan associations in Michigan] by the present Michigan share tax depends entirely on whether you view their ‘savings accounts’ as being analogous to bank shares or bank deposits. If such accounts are similar to deposits, there is no inequity. If they are similar to shares, there is an inequity. The Michigan Bankers Association has felt that while these accounts may be similar

to bank shares from the legal point of view, for all practical business purposes they are more analogous to bank deposits and therefore, the respective tax burdens should be measured by spreading them over the total resources of each institution. Viewed in this manner, the present tax is not unfair and imposes as much tax burden on savings and loan associations as it does on banks, * * *." *Legal Bulletin* No. 2395, *supra*, pp 3-4.

The Report of the Michigan Bankers Association Taxation Committee as set forth in the *M.B.A. Annual Report* for 1959-1960, at p 21, states:

"The Committee unanimously adopted a resolution upholding the action of a previous M.B.A. Taxation Committee in its defense of the intangible tax. It was felt that this action was in keeping with our obligation to the legislature, and that a tax review at this time would not be favorable. * * *"

This represents the current position of the Michigan Bankers Association. [The affidavit of Ralph Stickle, executive manager and officer of the Michigan Bankers Association, filed as part of appellees' "Objections to Motion of Sixty-Eight Banks in Michigan to File a Brief as Amici Curiae," supports the above statements.]

In light of the foregoing, the question arises as to the nature of the involvement of the intervenors^[83] and

[83]

Originally, there were seven intervenor banks but three dropped out voluntarily, namely, Dart National Bank of Mason, Michigan, First National Bank of Charlotte, Michigan, and Houghton National Bank of Houghton, Michigan. Appellant refers to the fact that several banks were not permitted to intervene on its behalf without

those requesting to participate as amici curiae in this litigation. It would seem that only one of two conclusions is possible: (1) The unanimous action of the Taxation Committee of the Michigan Bankers Association and the acquiescence in that action, with the exception of the Michigan National Bank, at the 1959-1960 meeting of the M.B.A. does not reflect the true convictions of these banking associations in regard to the way Michigan treats them taxwise; or (2) the intervenor and amici curiae banks have no true concern in this litigation but are merely along for the ride, at the request and solicitation of the Michigan National Bank.[84].

Since all of the Michigan amici curiae banks (except those that were also intervenors) have paid their intangibles taxes imposed by Act No. 9 voluntarily and without protest and have taken no action to protect any right of refund they might have, and since the intervenor banks permitted the statute of limitations to run against their

also indicating that the National Bank of Detroit, Detroit, Michigan, the Old Kent Bank, Grand Rapids, Michigan, Grand Haven State Bank, Grand Haven, Michigan, Alpena Savings Bank, Alpena, Michigan, and the Union National Bank, Marquette, Michigan, attempted to intervene as parties defendant.

[84]

It is the understanding of counsel for appellees, on information and belief, that the appellant bank, through its counsel, officers or employees, solicited the participation of the intervenor and amici curiae banks and many other banks in Michigan. Counsel for appellees further understand, on information and belief, that the intervenor and amici curiae banks have not been asked to bear any of the expense of litigation; that the intervenor's pleadings and briefs in the trial court and the amici curiae brief have been prepared at the expense of appellant bank; and that the amici curiae bank officers are not familiar with the proceedings in this cause. See appellees' "Objections to Motion of Sixty-Eight Banks in Michigan for Leave to File the Attached Brief as Amici Curiae."

right to claim refund of part of such tax moneys, it would seem that they manifest no serious objection to this tax.

Thus, it would seem, that the only conclusion for such action which can be reached is that the appellant in this cause is single-handedly attempting to have declared unconstitutional by this Court, on the claim of "unfair competition" and "tax inequality," legislation drafted, sponsored, and proposed by the Michigan Bankers Association that was enacted, in part, to prevent the discrimination which existed prior to the adoption of Act No. 9 of the Michigan Public Acts of 1953 between state and national banking associations.

If the appellant's position were controlling, it and other national banking associations in the State of Michigan would again escape taxation (except taxes on real property) while all other financial institutions in that State, including savings and loan associations, except credit unions, would respond to taxes equivalent to those here complained of by appellant.

B. POSITION OF THE PARTIES

Reference is made to the trial court's opinion in Appendix A, of the Jurisdictional Statement for a proper statement of the respective positions of the parties (R. 60a-68a). They were stated thus by the trial court:

"Plaintiff contends that the Michigan Intangible Tax Act fails to meet the requirements of Section 5219 in two particulars: (1) Michigan National Bank shares are taxed at a greater rate than other moneyed capital

in the hands of individual citizens coming into competition with the business of the plaintiff bank, (2) that the Michigan Statute levies a tax upon 'the privilege of ownership' of shares in national banks, that this is not the legal equivalent of a tax upon the shares in such banks and is not one of the alternate methods of taxation permitted." (R. 62a)[85]

"Initially, the moneyed capital alleged by plaintiff to be in competition with it and to be taxed at a lesser rate included building or savings and loan associations, insurance corporations, credit unions, finance companies, and monies in the hands of individuals and partnerships.

"Shortly before the commencement of trial, plaintiff abandoned its claim insofar as insurance corporations, credit unions, finance companies and individuals and partnerships were concerned, and its counsel stated that it would confine its case to the competition which national banks face in this state with building and savings and loan associations, both state and federal.

• • • Without attempting to state in detail the proofs • • •, it may be said that plaintiff claims that the proofs bring the case within the rule stated in *First National Bank v. Hartford*, 273 U.S. 548: • • •" (R. 62a-63a.)

[85]

Contention (2) has been abandoned by the appellant, since it is not mentioned in its Jurisdictional Statement or brief.

"In support of such claim, plaintiff offered a mass of statistical evidence as to the capital, assets, savings accounts, loans and investments of national banks, nationally, state-wide and of the plaintiff national bank. Like evidence was offered as to the business of the savings/building and loan associations, nationally, state-wide and in the seven cities in which plaintiff did business.

"Plaintiff further offered the testimony of officers of the loan associations and of the plaintiff banks as to the existence of competition between the two types of institutions.

"And plaintiff forcefully urges that such evidence establishes that both plaintiff and defendant make loans upon the security of mortgages on residential real property and that in that field there exists, in fact, substantial competition between the plaintiff bank and the several savings/building and loan associations.

"Plaintiff further contends that the rate of tax levied against the shares of national banks is several times that levied against the shares of savings/building and loan associations.

"Defendants take issue with plaintiff upon the existence of competition in fact, and upon the existence of discrimination in the rate of tax against the two types of institutions.

"With references to competition, in fact, defendants contend that the savings and loan associations operating in the area of plaintiff bank are small institutions as compared to the plaintiff; that they function solely

in a very narrow and restricted field compared to the varied activities of plaintiff and other national banks; that the savings and loan associations' basic organization and financial structure are so different from national banks that they cannot be compared with such institutions; that the alleged competing savings and loan associations concentrate their loans in conventional loan activity prohibited to plaintiff bank while plaintiff concentrated its loan activity in fields (F.H.A. and V.A.) not utilized by the savings and loan associations; that the proofs offered do not sustain a finding that the capital employed by savings and loan associations in 1952, represented a substantial portion of capital employed in any alleged competition by the savings and loan associations with the business of the plaintiff and other national banks; that plaintiff had no difficulty in obtaining all the capital it needed in 1952 and could not trace any part of its capital to any investments and that in 1952 it loaned only its deposit money on security of real estate.

"And defendant summarizes its position on this factual issue as follows: 'in the last analysis, savings and loan associations cannot be in "substantial competition with the business of national banks" because they cannot and do not engage sufficiently in the activities characteristically carried on by the national banks. Stated another way, if they are not comparable institutions in substance, how can they be in substantial competition?'

"Upon the issue of discrimination, it is defendants' contention that the Michigan Intangible Tax from the standpoint of the economic impact, imposes an equivalent tax burden on national banks and savings and loan associations.

“Defendants further present certain serious contentions of law which, if decided in favor of defendants, make the determination of the above issues of fact unimportant. These, to a certain extent, overlap and may be briefly summarized: first, that the states have the power to give preferential tax treatment to thrift and home financing institutions such as mutual savings banks and savings/building and loan associations upon the ground that public policy without violating section 5219; and, secondly, that Congress by the enactment of the 1933 Home Owners Loan Act has made it clear that the provisions of section 5219 do not apply to savings/building and loan associations.

“The banks of Michigan are not unanimous in this litigation.

“The Michigan Bankers Association has been permitted to file a brief as *amicus curiae* in which it states the position of its members * * * [quoted *supra*, p 31]:

• • •

“And their counsel takes substantially the same position upon the several questions presented as does the Attorney General on behalf of the defendants.” (R. 65a-67a) (Emphasis supplied) [Bracketed material added]

C. STATEMENT OF FACTS

1. Introduction

The facts in this cause pertain primarily to a consideration of the purpose, nature, financial structure and activi-

ties of the appellant bank and national banks in general as compared to 16 savings and loan associations (operating in the area where appellant bank has branch offices) and other mutual thrift institutions generally. These facts were developed with emphasis upon:

1. The nature, character, purpose and function of savings and loan associations and mutual savings banks as compared to national banking associations;

2. A determination of whether the Michigan tax system discriminated against national bank stock as compared to savings and loan association share accounts; and

3. The nature and extent of involvement of both savings and loan associations and national banking associations in the residential mortgage market.

Appellant attempts to frame an additional factual issue, namely:

“Since the Early Days there have been Substantial Changes in Character, Method, Manner and Scope of Operations of Savings and Loan Associations.” (Br. 20)

There is no evidence in the record to support such statement. In appellant's recitals in support of this statement (Br. 20-24), it cites no page of the record in this cause, nor does appellant define what it means by “Early Days.”

The record in this cause supports the proposition that there has been no significant change in Michigan savings and loan associations since their creation by Act No. 50, Michigan Public Acts of 1887; that they are the same in purpose, character, and practices as the federal savings

and loan associations of the present day and of the 1930's (R. 105a, 734a, 735a); and

“That from their beginnings and continuously throughout their history, building and loan associations have been similar in character and purpose to and of the same general class of mutual thrift and home financing institutions as mutual savings banks.” (R. 109a)[86]

It should further be noted that the appellant has not attempted to bring its case factually within the restrictions generally of § 5219. Appellant by its argument concedes, that the Michigan legislature, in enacting Act No. 9 of the Michigan Public Acts of 1953, did not evidence an unfriendly or hostile attitude toward investments of national bank shares; that the alleged tax discrimination, in actual practice, has not resulted in unequal or unfriendly competition between investors in national bank shares and other moneyed capital in this state; that as a matter of fact the moneyed capital of savings and loan associations employed in competition with the business of appellant and other national banking associations does not constitute a relatively material part of all other moneyed capital in this state; or that as a matter of fact Act No. 9 was enacted for no other purpose than to provide tax equality between financial institutions.

It is therefore apparent that the appellant has not proven its case within the purview of § 5219.

[86]

These statements are also supported by the legislation creating the state and federal associations, referred to in Statutes Involved, pp 9-17, *supra*. As there indicated, both Michigan and federal savings and loan associations are organized and supervised as mutual thrift institutions created to encourage home ownership and thrift savings.

The appellant erects its case primarily on evidence pertaining to the involvement of national banking associations generally and appellant in particular in the home mortgage field in competition with savings and loan associations. The involvement of both of these institutions in the residential mortgage market, as a factual proposition, is obvious. Appellant assumes that this constitutes substantial competition within the purview of § 5219, so as to invalidate a share tax on national bank stock, unless a savings and loan savings share account is taxed at the same rate as a share of national bank stock. As a mixed question of fact and law (*First National Bank v. Hartford*, (1927) 273 U.S. 548), the Supreme Court of Michigan concluded that savings and loan associations in Michigan in 1952 were not in substantial competition with the business of appellant and other national banking associations because:

(1) The involvement of the savings and loan associations in the home mortgage market by the use of savings share account moneys could not be competitively compared to the involvement of national banking associations in the residential mortgage market by the employment of a source of other moneyed capital, namely, **deposits**, that was denied to savings and loan associations. Essentially, this is but recognizing the basic fundamental differences between savings and loan associations and national banking associations.

(2) Assuming that the institutions could be compared, still the area of overlap between the activities, functions and business of the national banks and those of the savings and loan associations in Michigan is so narrow and restricted, because of the limited scope of operations of savings and loan associations and the limited involvement

of national banking associations generally in the residential mortgage market (and that primarily in an area fostered by Congress, namely, F.H.A. and V.A. fields), that these institutions could not be considered to be in substantial competition.

Other evidence pertaining to the question of the nature, character, purpose and functions of savings and loan associations is directed to a consideration of whether the savings and loan associations share accounts could be compared to national bank stock for competition and tax discrimination purposes. The uncontradicted testimony of Professor George W. Woodworth, Professor of Finance and Banking at the University of Michigan, was to the effect that a share of stock in a national banking association constitutes an equity investment and cannot be compared to a savings and loan savings share account; that a savings and loan share account is comparable to a bank deposit or a deposit in a mutual savings bank; and that there is no difference in substance between savings and loan share accounts and bank deposits (R. 827a-831a). Since this is a well-established factual proposition, it is clear that the appellant has made no case in regard to either the factual question of competition or a factual question in regard to discrimination, for admittedly the appellant invests an aliquot part of its deposit moneys in the residential mortgage field and not its stock, and admittedly the savings and loan associations invest in residential mortgages moneyed capital represented by their share accounts, and admittedly bank deposits in Michigan are taxed at a lesser rate than are the savings share accounts of savings and loan associations.

There follows for consideration of this Court a summary of facts pertaining to national banks generally, to the ap-

pellant bank in particular, to savings and loan associations generally, to savings and loan associations in Michigan, and to those sixteen associations in the so-called competitive area of appellant bank. Additional facts pertaining to alleged competition and discrimination will be set forth in the argument part of the brief.

2. Facts Pertaining to National Banks Generally

The primary objective of Congress in creating the National Bank Act was a monetary one (R. 807a) and grew out of the chaotic state of the currency in the early 19th century (R. 809a).^[187]

The primary function of national banks, as originally created and up to and including 1932, was a monetary one (R. 823a). It consisted of: (1) providing checkbook money (demand deposits) (Df. Ex. 219; R. 814a, 1282a); (2) receiving, paying out, clearing, collecting and transferring money payments (R. 823a); (3) paying out and receiving currency (R. 823a); (4) acting as a depository for the Federal Government (R. 823a); and (5), performing miscellaneous services such as dealing in foreign and domestic exchange and holding reserve balances of commercial banks (R. 824a).

National banks provided 56% of the checkbook money, which amounted to about 90% of all money payments in the United States in 1952 (Df. Ex. 219; R. 814a, 1282a).

[187]

See the opinion of the trial court (R. 69a-73a) for a brief discussion of the history of the enactment of the National Bank Act on June 3, 1864.

No other financial institutions can create checkbook money (R. 818a).^[88]

Their secondary function within this period included making loans and investments; receiving time and savings deposits; and providing trust, safekeeping and miscellaneous bank services (R. 824a, 825a).

From the time of the National Bank System's inauguration up through 1952, the ratio of deposits to capital changed markedly as indicated by the rapid increase in checkbook money (R. 815a, 818a). No distinction was made on national bank reports prior to 1913 between time and demand deposits (R. 818a). In 1913, time deposits were only about 1/6th of total deposits and have subsequently accounted for an increasingly larger proportion of the total assets and total deposits (Df. Ex. 219; R. 814a, 1282a).

National banks in 1952 could only make conventional mortgage loans for a term not greater than ten years and in an amount not exceeding 60% of the real estate's valuation.

National banks in the United States, as of 1952, held residential real estate loans amounting to 6% of total assets (Df. Ex. 224A; R. 838a, 1289a). Of residential real estate loans, 61.2% were F.H.A. or V.A. mortgages (R. 840a).

In 1865, total deposits represented only about 40% of total national bank assets; in 1919, they accounted for

[88]

Mr. George Walter Woodworth, Professor of Finance at the University of Michigan and specializing in money and banking, describes this process on pp R. 816a-818a.

approximately 62%, and as of December 31, 1952, total deposits represented almost 92% of total assets (Df. Ex. 219; R. 814a, 1282a).

National banks required a higher degree of liquidity than any other institution since all of their deposits were demand or near-demand obligations (R. 825a). National banks preferred F.H.A. and V.A. loans because of their liquidity and shiftability. These loans are readily bought and sold in the market and, therefore, the national banks specialize in these types of mortgage loans as compared to conventional loans (R. 841a).

The *character and purposes* of national banks have not changed in any material respect since 1926. In 1952, they were engaged in the same type of activity and carried on the same business and economic function for which they were created (R. 823a, 824a).

On December 31, 1952, the national banks located in the seven cities in which appellant has its branch offices had total assets of approximately \$664,000,000 (Df. Ex. 207; R. 672a, 1269a).

3. Facts Pertaining to Appellant Bank

The appellant's home office is in Lansing. It does business in the state of Michigan and throughout the United States (R. 702a) through its principal office in Lansing and its seven branches, located in Lansing, Flint, Saginaw, Port Huron, Marshall, Battle Creek and Grand Rapids (R. 7a). In conducting its banking business, it employed approximately \$306,000,000 of assets, 4.3% of which (approximately \$13 million) represented the capital account of the bank (Pl. Ex. 3; R. 529a, 931a-935a). This capital ac-

count included preferred stock, common stock, retirement reserve, surplus, and undivided profits (R. 932a).

Appellant bank was organized in 1941. It has experienced a substantial and profitable growth. In 1941 it started business by issuing 150,000 shares of stock of \$10 par value. A \$1000 original investment in 1941 would have returned to the investor by 1952, \$1,308.80 in cash dividends (Df. Ex. 204B; R. 672a, 1296a). In addition, stock dividends and market appreciation made the original investment worth \$6,691.20 in 1952 (Df. Ex. 204B; R. 672a, 1296a) — 800% of the original investment or an average annual increase of 60%.

The ownership of its shares was concentrated in a relatively few shareholders of common stock, there being 3%, or 68 holders out of a total of 2,277 common stockholders, who owned 62% of all outstanding common stock in 1952 (R. 709a). Approximately 50% of appellant's shares are owned by individuals in the highest tax bracket (R. 1328).

The appellant bank carried on all the functions and activities characteristic of a national banking association, including the following: providing checkbook money; receiving, paying out, clearing, collecting and transferring money payments; paying out and receiving currency; acting as a depository for governmental agencies, including the Federal Government and the United States Treasury Department; dealing in foreign and domestic exchange; holding balances of other banks; and making loans on the strength of financial statements of borrowers, on the security of shares of stock, bills of lading, fungible goods, oil properties, oil leases, automobiles, appliances, trailers, insurance policies, and livestock, both within and without the state of Michigan. It maintained safe deposit facilities; maintained a

trust department and acted as trustee for testamentary and inter vivos trusts; issued letters of credit; sold, shipped and received securities; and acted as transfer agent, registrar and dividend disbursement agent, coupon paying agent, and trustee in connection with corporate stock issues or under indenture agreements (R. 679a-683a).

In 1952 the appellant loaned money secured by real estate in, as well as outside of, Michigan (R. 702a). The principal type of loans to persons outside Michigan was in so-called "trailer paper," which produced a substantially greater yield per dollar loaned than residential mortgages (R. 693a). Among appellant's borrowers were finance companies (R. 682a) and municipalities (R. 685a). Savings and loan associations could loan only on real estate mortgages within the immediate vicinity of their location.

The appellant sold mortgages it had originated to other institutions, making a profit on these transactions. It was looking for additional mortgage brokerage business (R. 706a). This was not true of the alleged competing savings and loan associations.

In 1952 appellant had total deposits of some \$283,000,000, classified into approximately \$165,000,000 of commercial deposits (including \$22,000,000 of public funds), upon which no interest was paid to the depositors, approximately \$37,000,000 in time certificates, and approximately \$81,000,000 in savings deposits (Df. Ex. 202, R. 672a R. 1263a). In 1952 all the funds it had to loan were from deposits. The savings and loan associations in Michigan cannot accept deposits and, therefore, had none.

Since its original incorporation in 1941, i.e., from December 31, 1941, to December 31, 1957, appellant has grown in total resources from about \$68,000,000 to approximately

\$481,000,000 without the issuance of any additional common stock except stock dividends (Df. Ex. 202, R. 672a, 1262a; Df. Ex. 203B; R. 672a, 1315) [Offered as 203A].

In contrast, almost all the growth of savings and loan associations in Michigan was from the issuance of additional savings share accounts. The appellant bank alone grew in total assets at the average rate of \$25,000,000 per year from 1941 to 1952 while all savings and loan associations in Michigan grew only \$10,000,000 per year. Appellant's gross operating income was approximately \$12,000,000, of which a little over \$11,000,000 constituted interest income derived from the following sources: Securities, \$2.2 million; general loans, \$1.2 million; mortgage loans, \$2.6 million; and installment loans, \$5 million (Df. Ex. 205, R. 672a, 1266a, 1267a). About 20% of appellant's total assets were employed in mortgage loans (Df. Ex. 202; R. 672a, R. 1262a), and approximately 23% of its interest income was received from mortgage loans (Df. Ex. 205; R. 672a, R. 1266a). In the loan field, appellant's installment loans unsecured by real estate, were the most profitable. Here, appellant received approximately 45% of its total interest income from the employment of approximately 19% of its total assets (Df. Ex. 205; R. 672a, 1266a).

The interest income of appellant bank in 1952, from all its mortgage activities, was 26% of its total income and 21.8% of its total income after excluding F.H.A. Title I Home Improvement interest income. Its total real estate loans amounted to 22% of its gross assets and 20.2% of its total assets after excluding F.H.A. Title I Home Improvement loans (R. 761a, 762a).

Appellant was engaged in the real estate mortgage market and apparently was able to satisfy its demand for residential real estate mortgages, except for additional mort-

gages to brokerage (R. 706a). Appellant used all of its funds, capital, surplus, undivided profits, reserves, and deposits for the operation of its business (R. 708a). It cannot allocate or trace any dollar of its capital account to any particular mortgage or loan business (R. 689a). The appellant bank was attempting to make as much money as possible for its stockholders (R. 686a, 687a). Its entire capital was available for doing business in whatever locality it operated (R. 688a). All of its capital was used in competition with all the other moneyed capital in each area in which it did business (R. 688a, 689a). Its stock was not insured by any federal agency, but each deposit was insured up to \$10,000 by the Federal Deposit Insurance Corporation (R. 690a, 691a).

The comptroller of the currency was concerned with the appellant's concentration of its assets in trailer paper (Pl. Ex. 4-A-1; R. 1331, 1320). As to this charge, the bank answered that they had "enough" capital in 1952.

Appellant bank treated F.H.A. loans as liquid items in 1952 because they are guaranteed by a branch of the federal government (R. 694a) but did not so treat conventional mortgage loans (R. 697a, 698a).

The appellant did not make any conventional mortgage loans on residential real estate with a term of more than 10 years nor an amount of more than 60% of the appraised value. Only a "small percentage" of the appellant's conventional mortgages were construction loans to individuals (R. 675a). Its improvement loans were not secured by real estate mortgages (Pl. Ex. 3; R. 592a, 934a).

The total real estate loans of Michigan National Bank represented 22% of its total assets, and residential real estate loans were 20.2% of total assets (R. 761a, 762a).

Its F.H.A. and V.A. loans constituted 70% of the latter (R. 842a). F.H.A. and V.A. loans were 14% of total assets (70% or 7/10 of 20%), while conventional mortgages amounted to 6% of total assets.

4. Facts As to Savings and Loan Associations Generally

Historically and currently, the business of savings and loan associations is predominantly in the field of gathering thrift savings and lending these accrued savings for home ownership on the basis of long-term residential mortgages (R. 854a).

Savings share accounts represent 84.7% of the associations' assets (R. 850a). These accounts are always open to receive small additional amounts from savings customers (R. 850a, 851a).

Savings and loan associations have not changed their business character or practices since 1933 (R. 864a, 865a). There has been a change in the technical method by which the associations operate, but there have been no substantial changes in their business character of accumulating small thrift accounts and lending them for home building purposes (R. 894a, 895a).

The fact that savings and loans members were both borrowers and lenders in the early times was a superficial aspect of the organization. The mutuality in substance is that the associations are not private profit institutions with capital stock (R. 898a).

Savings and loan associations are similar to mutual savings banks and in 1952 were not similar to national banks (R. 827a). Investors in savings and loan associations

are comparable to depositors in mutual savings banks (R. 827a-829a) and in commercial banks (R. 845a).

The general public was able to make investments in savings and loan accounts at will (R. 850a, 851a). They were entitled to withdraw their savings share accounts at any time (subject to a 30-day notice requirement, rarely invoked) and, in the event of withdrawal (except in the unlikely case of liquidation), they would receive only the face amount paid plus credited dividends (R. 851a).

• Unlike shares in national bank stock, savings and loan shares do not appreciate in market value. The general public is always able to purchase savings and loan shares at "par" value, thus preventing any capital gain on the share of the savings and loan associations (R. 849a-851a).

• Associations were permitted to pay dividends only out of current earnings. They could not use undivided profits or reserves for this purpose (R. 731a).

5. Facts as to Savings and Loan Associations in Michigan

The facts as to savings and loan associations in the aggregate are equally applicable to the Michigan associations.

There has been ~~no~~ substantive change in the character and operation of savings and loan associations since 1937; their basic purposes and practices have been the same; and they served the same kind and class of people in their business activities for that period (R. 734a, 735a). ⁴The average mortgage loan in 1937 was approximately \$5500 and in 1952, about \$6500 to \$7500 (R. 736a). Investors in savings share accounts are not in any different class from

anyone else engaged in a thrift savings program (R. 739a). Michigan savings and loan associations have equipped themselves to service and serve the lower income group, the middle-class group, or any other group in need of home mortgages (R. 740a).

A borrower from a Michigan savings and loan association automatically became a shareholder of one share as a condition attendant to granting the mortgage loan (R. 740a).

The facts pertaining to savings and loan associations generally and in Michigan (developed above) are equally applicable to the sixteen associations with offices located in the same cities where appellant has branch offices. Their savings share accounts constituted 84.9% of their total assets (Df. Ex. 209; R. 748a, 1273a). Of their total assets, 80.4% were invested in first mortgage loans (Df. Ex. 209; R. 748a, 1273a).^[89] These associations *did not* maintain the following facilities or conduct the following operations: loan money to finance companies; make unsecured loans on the strength of a borrower's financial statement;^[90] loan money secured by chattel mortgages, shares of stock in firms other than the associations, bills of lading, fungible goods, insurance policies, or livestock; issue letters of credit; purchase or sell securities on the order of a customer; collect notes and drafts for customers; deal in foreign exchange; maintain safe deposit or safekeeping facilities; ship and receive securities for the account of customers; operate trust departments; act as transfer

[89]

The associations apparently had sold some of their own properties, insignificant in amount, on land contracts.

[90]

The only exceptions are the three associations that made F.H.A. improvement loans (Df. Ex. 200c; R. 714a, 1261a).

agents, escrow agents, registrars, dividend disbursing agents, coupon paying agents, or trustees for issues of securities; accept deposits; or make oil loans (Df. Ex. 227; R. 671a, 1293a-1295a). The source of funds of these associations was limited to savings share accounts, undivided profits and reserves, and limited borrowing from the Federal Home Loan Bank Board.¹⁹¹¹

These associations did not carry on any significant loan activity other than that secured by first mortgages on residential real estate (Df. Ex. 200C; R. 714a, 1261a). Approximately 10% of their assets were in undivided profits and reserves. Undivided profits and reserves constituted approximately 11.5% of the total share accounts (Df. Ex. 209; R. 748a, 1274a; Pl. Ex's. 36-A through 36-J; R. 147a, 979a thru 988a; Pl. Ex. 45-A; R. 191a, 1007a; Pl. Ex. 61-F; R. 336a, 1017a; Pl. Ex. 73-E; R. 451a, 1126a; Pl. Ex. 77-E; R. 452a, 1159a; Pl. Ex. 81-E; R. 453a, 1193a).

Compared to appellant, the sixteen savings and loan associations alleged to be in competition with appellant are small institutions. The smallest of these had assets equal to only **.2 of one per cent** of the appellant's assets, and the largest, only 8% of the appellant's assets. The smallest association had outstanding loans equal to only **.4 of one per cent** of appellant's total loans, and the largest had 14% of the same. The smallest association's savings share accounts equaled only **.2 of one per cent** of the deposits of appellant bank, and the largest association's, only 7.5% of appellant's deposits (Pl. Ex. 3; R. 529a, 931a thru 935a; Df. Ex. 209; R. 748a, 1274a).

¹⁹¹¹

These borrowings were subject to rigid statutory limitations.

6. Conclusions of Fact

It is respectfully submitted that the record in this cause amply supports the following conclusions of fact:

- A. Savings and loan associations in Michigan are not the types of institutions that are in substantial competition with the business of national banks.^[92]
- B. The basic character, purpose and functions of national banking associations and savings and loan associations in Michigan have not changed in any significant way since their early beginnings.
- C. While the primary business and purpose of national banks has always been a monetary one and its secondary purpose principally the making of short-term loans and discounts, the business and purpose of savings and loan associations has always been the accumulation of small rivulets of thrift savings and lending these accumulations for home ownership purposes.^[93]

[92]

There is very little similarity in substance between share accounts of savings and loan associations and capital stock shares of national banks; the latter are analogous to reserves and undivided profits of savings and loan associations. Nationally such reserves and undivided profits of savings and loan associations amounted to 7.3% of their total assets, while the capital stock, surplus and undivided profits of national banks represented 6.5% of their total assets in 1952 (R. 845a). Savings share accounts, on the other hand, amounted to 84.7% of the savings and loan associations' assets in 1952 in the United States, whereas deposits in national banks were 91.8% of their total assets (R. 846a).

[93]

As above indicated, the great bulk of national bank business in 1952 was in fields which savings and loan associations do not enter

D. The Michigan tax system does not create a hostile or unfriendly discrimination against national banks in the way it taxes savings and loan associations and other financial institutions, as contrasted to its taxation of national banks.

E. From their beginnings and continuously throughout their history, building and loan associations have been similar in character and purpose to and of the same general class of mutual thrift and home financing institutions as mutual savings banks.^[94]

at all, such as: the creation of checkbook money; the receiving, paying, clearing, collecting and transferring of checkbook money; serving as warehouses for currency; serving as depositories of the Federal Government; dealing in foreign exchange and domestic demand drafts; issuance of officers' checks; certification of customers' checks; holding reserve balances of other banks; making short-term loans to businessmen, farmers, consumers and making loans to brokers and dealers secured by stocks and bonds; providing trust department services; accepting letters of credit; collecting demand and time drafts for customers; providing safekeeping services; and selling travelers' checks (Df. Ex. 227; R. 671a, 1293a-1295a).

[94]

As testified to, in substance, by Professor Woodworth, savings and loan associations were not similar to national banks in 1952, but were quite similar to mutual savings banks. Savings and loan associations, as well as mutual savings banks, were from the beginning organized as mutual thrift associations, without shares of capital stock. In contrast, the capital stock of private business and commercial banking corporations is owned by a *separate group* seeking to make a business profit (R. 827a-830a). Mutual savings banks and savings and loan associations have always regarded real estate as the primary form of investment of savings entrusted to them (R. 830a). Their capital structure is extremely similar, savings and loan associations having, in 1952, an average capital account consisting of reserves and undivided profits amounting to 7.2% of total assets, and mutual savings banks having an average capital account amounting to 9.8% of total assets (R. 845a-846a). Share accounts of savings and loan associations accounted for

- F. There is no evidence to support a finding that the "capital" of savings and loan associations is *substantial in amount* as compared to all the moneyed capital employed in the state of Michigan in 1952 in the various phases of national banking activities and business in that state.^[95]
- G. There is no evidence to support a finding that a *substantial portion* of total moneyed capital employed in the state of Michigan in 1952 *came into competition* with the business of national banks or that it was taxed at a lesser rate than national bank shares.^[95]
- H. There is no evidence to support a finding that the savings and loan associations of the year 1900 were any less "competitive" with the then business of national banks than the savings and loan associations of 1952.
- L. There is no evidence to support a finding that savings and loan associations served a different class of

84.7% of their total assets in 1952, which the savings accounts of mutual savings banks amounted to 89.6% of their total assets (R. 846a).

In the early times of their existence, savings and loan associations required borrowers to be savings members of the associations. This was a superficial aspect of the organization and was not an essential element in the mutuality of the organization (R. 898a). The mutuality in substance was, is, and always has been, that such associations are not private profit institutions with capital stock owned by a separate group, often a minority, which is seeking to make a business profit (R. 898a).

[95]

When the appellant's principal witness, Mr. Fairles, was questioned about these facts, he stated that he had no knowledge (R. 701a). Otherwise, the record is silent on this point. Appellant contends that this is immaterial.

savers and borrowers in 1952 than they did historically or in the year 1900.[96]

J: There is no evidence in the Record as to the total amount of moneyed capital employed in Michigan in 1952 by financial institutions other than national banks and savings and loan associations.[97]

D. FINDINGS AND CONCLUSIONS OF THE COURTS BELOW

The trial court determined that Michigan had authority to grant preferential tax treatment to thrift and home financing institutions, such as mutual savings banks and building and loan associations, so long as it was founded upon just reason and did not operate as an unfriendly discrimination against investments in national bank shares. The court concluded that the partial exemption rule[98]

[96]

The appellant devotes a substantial portion of its brief and, in fact, premises its entire argument on the unfounded factual conclusion that in 1952 savings and loan associations in Michigan were different from the savings and loan associations of the year 1900; that they serve a different class of borrowers; and that they attract a different class of share account holders. Those conclusions and argument are completely unsupported. The *only evidence* on those points was furnished by appellees' witnesses Ethan Dgty, Director of the Savings & Loan Division of the Secretary of State's Office and by Professor Woodworth and is to the contrary.

[97]

The aggregate assets of national banks in Michigan in 1952 amounted to \$3,728,340,000 (Df. Ex. 226, R. 857a, 1292a), while aggregate assets of all savings and loan associations in Michigan in 1952 amounted to \$534,314,000 (Pl. Ex. 6, R. 655a, 960a) about 14%, or $\frac{1}{7}$, thereof.

[98]

Reference will be made throughout this brief to this rule, which can be generally stated, as follows: A state may exempt or prefer

was dispositive of the issues since Michigan's tax treatment of savings and loan associations as compared to national banks is based upon just reason and is not made with the hostile purpose of discriminating against national banks.

The trial Court stated in its conclusions, as follows:

"1. Since 1887, the Courts have consistently held in every case squarely involving the question that the state may exempt or prefer on the ground of public policy mutual savings banks and other like institutions, provided such exemption is based on just reason and is not made for the hostile purpose of an unfriendly discrimination with national banks.

"2. That the power of the State to make such exemptions on the ground of public policy is an important one, grounded in history and on precedent. The intention of Congress to destroy it should not be lightly inferred.

"3. The 1923 and 1926 amendments to section 5219 and the amendments to the Federal Reserve Act broadening the powers of the national banks were not intended to take from the State such long established and well recognized power.

"4. That from their beginnings and continuously throughout their history, building and loan associations have been similar in character and purpose to and

essentially tax some moneyed capital employed in competition with some phases of the business of national banks without invalidating a tax on national bank shares, so long as the exemption or preferential treatment is for just reason and does not operate as a hostile or unfriendly discrimination. It does not have the connotation appellant would give it, i.e., taxing at a lower rate other moneyed capital. (Br. 60, 62).

of the same general class of mutual thrift and home financing institutions as mutual savings banks.

"5. Congress in the Home Owners Loan Act of 1933 definitely recognized and approved such classification of savings/building and loan associations and the propriety of different tax treatments of banks and such associations and in effect, said that money invested in such associations is not *moneyed capital in competition with the business of national banks*. (Emphasis ours)

"6. That Michigan's tax treatment of savings-building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks." (R. 108a-109a)

"The proofs do not support a finding that there has been any material difference between the Michigan institutions [savings and loan associations] of the present day and those organized under the Federal Statute [Home Owners Loan Act of 1933]." (R. 105a). [Bracketed material added]

"The Michigan Act [Savings and Loan Act; Act 50, Michigan Public Acts of 1887] has not been substantially changed since its adoption in 1887. . . ." (R. 105a) [Bracketed material added]

" . . . the fact that the economic burdens imposed by the Michigan Statute are not at great variance is of force in determining whether the Legislature in its treatment of taxation of savings/building and loan associations acted upon the grounds of sound public policy or for the purpose of an unfriendly discrimination against national banks.

"I find nothing in the proofs or the law to indicate . . . a hostile intention on the part of the Michigan Legislature. Rather, it appears that such preference as may exist resulting largely from the difference in the character of the two institutions, was in pursuance of an established public policy long existing in the states and long recognized by the courts and by Congress as being justified by the purpose and object of savings/building and loan associations." (R. 108a)

After a factual recital (R. 1335-1340) the Supreme Court of Michigan quoted the conclusions (1 through 6 above) of the trial court and further determined:

1. "The general rule of partial exemption under RS § 5219 has been well established, . . . [Quoting from *Hepburn v. School Directors*, 23 Wall (90 U.S.) 480, 485; *Adams v. Nashville*, 95 U.S. 19, 22; *Boyer v. Boyer*, 113 U.S. 689, 693; *Mercantile Bank v. New York*, 121 U.S. 138, 145, 146, 161]" (R. 1341-1343)

2. "Tax exemption or preferential tax treatment has been applied to mutual savings banks and savings and loan associations, . . . [Quoting from *Mercantile Bank v. New York*, 121 U.S. 138, 160, 161; *Davenport Bank v. Davenport Board of Equalization*, 123 U.S. 83, 86; *Bank of Redemption v. Boston*, 125 U.S. 60, 66-68; *Aberdeen Bank v. Chehalis County*, 166 U.S. 440, 460, 461; *First National Bank of Wellington v. Chapman*, 173 U.S. 205, 214; *Mercantile National Bank of Cleveland v. Hubbard* (ND Ohio), 98 F. 465, 471; 199]

[99]

Reversed in *Mercantile National Bank of Cleveland v. Hubbard* (C.C.A. 6) 105 F. 809. Upon remand, injunction issued in *Mercantile National Bank of Cleveland v. Lander* (ND Ohio), 109 F. 21. Appeal

Hoening v. Huntington National Bank of Columbus (1932) (C.C.A. 6) 59 F. 2d 479, 482, cert. denied 287 U.S. 648.]” (R. 1343-1349)

3. “• • • that because plaintiff bank’s shares were taxed at a different rate, or assessed by a different method than the method employed to tax the building and loan associations, does not violate RS § 5219: [Quoting from *Tradesman National Bank of Oklahoma City v. Oklahoma Tax Commission* (1940), 309 U.S. 560, 567; *Covington v. First National Bank of Covington* (1905), 198 U.S. 100, 114, 115; and citing *People v. Weaver* (1879), 100 U.S. 539]” (R. 1351-1353)

4. “Appellees introduced testimony, which was not controverted, that building and loan associations pay taxes which appellant bank does not pay (franchise, capital stock increase, use, and personal property tax), and further disclosed that the ratio of State and local taxes to total assets of the associations was .089, while appellant’s rate was .091; and, also, in regard to the proportion of the intangible tax to the total assets of national banks in Michigan and the proportion of the Michigan franchise tax to the total assets of all savings and loan associations showing a ratio of .02459 for all Michigan national banks and .02243 for all State savings and loan associations.” (R. 1353) [Emphasis supplied]

5. “The fundamental difference between a bank making loans from deposits and loans made otherwise, was recognized in *First National Bank of Shreveport*

to this Court resulted in reversal in *Lander v. Mercantile Bank*, 186 U.S. 458, with specific direction to reverse the circuit court of appeals and affirm judgment of District Court. (R. 1348)

v. *Louisiana Tax Commission* (1933), 289 U.S. 60, 64
* * * (R. 1355)

6. "Appellant relies on *First National Bank of Hartford v. City of Hartford* (1927), 273 U.S. 548
* * * (R. 1355)

"We do not agree with appellant that the Hartford decision overruled the *Bank of Redemption Case* [*Bank of Redemption v. Boston*, 125 U.S. 60] * * * (R. 1357)
[Bracketed material added]

"The *Hartford* decision established that a mixed question of fact and law is involved in determining the question of 'substantial competition' * * * (R. 1357)

"Not only did the *Hartford* decision deal with sweeping exemptions for a large number of competing institutions, but the equivalence of the tax imposed on national banks and other institutions was not considered, * * * (R. 1357)

7. "The record in this appeal discloses that Michigan building and loan associations operated in a narrow, restricted field, are markedly different in character, purpose and organization from national banks, and are not in 'substantial competition' with national banks." (R. 1358)

8. "The record establishes that there was practical equality of the total tax imposed upon building and loan associations and upon national banks, and an difference would be justified as partial exemptions under the decisions of the supreme court of the United States quoted above. The restriction contained in RS

§ 5219 has to do with the actual incidents and practical burden of the tax imposed. * * * (R. 1358)

9. "Appellant, as a taxpayer claiming immunity from the tax, had the burden of establishing its right to the exemption. * * * Plaintiff failed to meet this burden of proof." (R. 1358-1359)

10. "We reiterate and approve the finding of the trial court:

"That Michigan's tax treatment of savings/building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks." (R. 1359).

SUMMARY OF ARGUMENT

The appellees rest the affirmative of their argument on the following propositions:

1. The Michigan tax structure does not discriminate against investors in shares of national bank stock within the meaning of § 5219 by the methods employed to tax savings share accounts in savings and loan associations and national bank stock.

2. The State of Michigan is entitled to preferentially tax savings accounts of savings and loan associations as compared to national bank stock without violating § 5219.

3. The "capital" of savings and loan associations, representing savings share accounts, invested in the narrow

and restricted field of first mortgage home financing, is not in "substantial competition" with the "capital" of national banks within the purview of § 5219.

4. Appellant has failed to meet its distinct burden of establishing by clear and cogent evidence and authority that Act 9 of the Michigan Public Acts of 1953, to the extent it subjects appellant's shares to taxation, is unconstitutional.

Affirmance of any one of these propositions requires affirmance of the Michigan Supreme Court.

INTRODUCTION

Resolution of the above propositions essentially turns upon the meaning of § 5219.^[100] The purpose of § 5219, as approved by decisions of this Court, is properly stated in

First National Bank of Guthrie Center v. Anderson, County Auditor, et al., supra, (1926) 269 U.S. 341, 347, 348:

[100]

For convenient reference, § 5219 is set out in pertinent part, as follows:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

"(b) In the case of a tax on said shares the tax imposed

“ * * * The purpose of the restriction is to render it impossible for any state, in taxing the shares [national banking stock], **to create and foster an unequal and unfriendly competition** with national banks, by favoring shareholders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking. [Cases Cited.]”

“ * * * The restriction is not intended to exact mathematical equality in the taxing of national bank shares and such other moneyed capital, **nor to do more than require such practical equality as is reasonably attainable in view of the differing situations of such properties.** But every clear discrimination against national bank shares and in favor of a **relatively material part of other moneyed capital employed in substantial competition with national banks** is a violation of both the letter and spirit of the restriction. [Cases Cited.]” (Emphasis added.)

This purpose was affirmed in

First National Bank v. Hartford, supra (1927) 273
U.S. 548

in the following language:

“shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.” (R. S. § 5219; Mar. 4, 1923, ch. 267, 42 Stat. 1499; Mar. 25, 1926, ch. 88, 44 Stat. 223; 12 U.S.C. 548.)

“ * * * It [§ 5219] was intended to prevent the **fostering of unequal competition** with the business of national banks by the aid of discriminatory taxation in favor of capital invested in institutions or individuals engaged either in similar businesses or in particular operations or investments like those of national banks. [Citing *Mercantile Bank v. New York*, 121 U.S. 138, 155] * * * ” (Emphasis and bracketed material added)

First National Bank of Guthrie Center v. Anderson, County Auditor, et al., supra, 269 U.S. 341,

and the cases analyzed therein indicate authoritatively that the term “other moneyed capital,” as used in § 5219, includes only moneyed capital “which is employed in such a way as to bring it into substantial competition with the business of national banks.”

As stated in

First National Bank of Hartford v. Hartford, supra, (1927) 273 U.S. 548,

the issue of “substantial competition” is a mixed question of fact and of law. The statute must be applied to the facts in hand in order to determine whether

“ * * * the particular moneyed capital and the particular competition with which we are here concerned are moneyed capital and competition within the spirit and purpose of the statute. * * * ”

It is respectfully submitted that this Court has never taken the mechanical approach to the application of § 5219, contended for by the appellant. It has examined the taxing system of a particular state to see whether it “create[s]

and foster[s] an unequal and unfriendly competition" with the national banks and to determine whether there is such "practical equality" in the treatment of national bank shares and other moneyed capital "as is reasonably attainable in view of the differing situations of such properties."

This Court's interpretation of § 5219, referred to above and set forth lucidly in *First National Bank of Guthrie Center v. Anderson, County Auditor, et al., supra*, (1926) 269 U.S. 341, clearly protects national bank stockholders and the business of national banks from unequal, unfriendly or discriminatory tax treatment; answers many of the practical problems raised by appellant's mechanical application of the *Hartford* case, *supra*, to the circumstances of this case; and achieves a harmony among the many decisions of this Court involving § 5219. Contrary to the appellant's contention, the exemption or preferential tax treatment of some moneyed capital for just reason does not violate § 5219 so long as such exemption, in the language of the *Guthrie Center* decision, does not "create and foster an unequal and unfriendly competition with national banks." (269 U.S. 341, 347)

Furthermore, it allows the states to tax different species of property (in the instant case, the savings share account and national bank stock) differently for tax purposes if such different treatment achieves practical equality and does not "create and foster an unequal and unfriendly competition with national banks."

Such an interpretation of § 5219 opens up to inquiry and appraisal the nature, purpose and character of allegedly competing institutions or allegedly competing other moneyed capital for the purpose of resolving the mixed questions of fact and law as to "substantial competition" and "discrimination against national bank shares and in favor

of a relatively material part of other moneyed capital employed in substantial competition with national banks."

Beyond alleging that "tax discrimination" exists, appellant has made no showing that Michigan's tax treatment creates or fosters an unequal and unfriendly competition between it and the savings and loan associations, or that such treatment favors investment in savings and loan share accounts to the detriment of investment in national bank stock. Rather, the appellant rests its case entirely upon (1) a superficial and mechanical comparison of the rate imposed on national bank stock, measured by capital account, and the rate imposed on savings and loan association savings shares, and (2) the fact that both institutions are involved in the residential mortgage business.

It portrays the "factual" competition in terms of involvement of both types of institutions in the residential mortgage business. Ultimately, the appellant completely disregards the "law" of competition or discrimination by failing to give any effect whatever to the fact that in the residential mortgage business it employs its deposit moneys (not its "capital", as defined by appellant), while the savings and loan associations employ their savings share accounts.

The appellant considers irrelevant the practical, operative effect and economic equivalence of the taxes imposed on savings and loan associations and their share accounts on the one hand and of the tax imposed on the banking associations and their stock on the other hand. Furthermore, appellant considers immaterial the differences in the nature, character, purposes, and financial structure of savings and loan associations and of national banking associations, and yet argues extensively that savings and loan associations have changed in these particulars.

Appellees insist at this point that § 5219 was enacted by Congress to protect investors in national bank stock from unequal competition, fathered or fostered by tax discrimination; and that the appellant has not made out a case because it has not alleged or established discrimination which results in unequal competition. Thus, the existence or lack of actual tax discrimination, the applicability of the **partial exemption** rule, or the presence or absence of "substantial competition" within the purview of § 5219 at this point is immaterial. Further, appellant's case is concerned solely with the question of **partial** exemption, discrimination and competition relative to savings and loan association share accounts and it has not established that savings and loan share accounts constitute "a relatively material part of other moneyed capital employed in substantial competition with national banks." (*First National Bank of Guthrie Center v. Anderson, County Auditor, et al.*, *supra*, (1926) 269 U.S. 341, 348). **As an initial proposition, appellant has not brought its case within the "relatively material part" requirement of § 5219.**

Even if it be assumed that appellant has stated a judicially cognizable case to be resolved by application of § 5219, the effect of such application is clear. Michigan's tax treatment of savings and loan associations does not invalidate the share tax on appellant's stock for this Court and Congress have made it abundantly clear that a share tax on national banks is not invalidated by application of § 5219 simply because some moneyed capital is exempt, and that institutions such as mutual savings banks, savings and loan associations, and other mutual thrift institutions, do not individually constitute other moneyed capital employed in substantial competition with the business of national banking associations.

1.

THE MICHIGAN TAX STRUCTURE DOES NOT DISCRIMINATE AGAINST INVESTORS IN SHARES OF NATIONAL BANK STOCK WITHIN THE MEANING OF § 5219 BY THE METHODS EMPLOYED TO TAX SAVINGS SHARE ACCOUNTS IN SAVINGS AND LOAN ASSOCIATIONS AND NATIONAL BANK STOCK. (This is a summary of argument presented on 96-116, *infra*.)

In reference to the question of discrimination, the Michigan Supreme Court found:

"The record establishes that there was practical equality of the total tax imposed upon building and loan associations and upon national banks, * * *"
(R. 1358)

This conclusion is in accord with the position taken by the Michigan Bankers Association in this cause as expressed in its brief amicus curiae (R. 1336-1337) and as further amplified in the Association's Legal Bulletin No. 2395 of July 2, 1959. It is **not** controverted by the appellant. Appellant simply urges that Michigan is required to impose the same **rate** of tax on a savings and loan share account (or a deposit in a savings bank (Br. 58)) as it does on a share of bank stock (Br. 47-52).

It is submitted that appellant's mechanical comparison—measurement by rate alone—is not an application of § 5219,^[101] since only those discriminations which result in

[101]

Uncontroverted testimony establishes appellant's comparison as "completely absurd" because

"* * * It ignores the economic realities of the businesses of the

unequal and unfriendly competition are prohibited by § 5219. To this end, a long and consistent line of decisions under § 5219 develop the proposition that it is the **effect** of the tax, not its **rate**, which is controlling.

People v. Weaver, (1879) 100 U.S. 539

First National Bank v. Hartford, *supra*, (1927) 273 U.S. 548, 560, 561

First National Bank of Guthrie Center v. Anderson, County Auditor, et al., *supra*, (1926) 269 U.S. 341, 347, 348.

Tradesmen's National Bank of Oklahoma City v. Oklahoma Tax Commission, (1940) 309 U.S. 560, 567

Hepburn v. School Directors, (1874) 23 Wall (90 U.S.) 480, 485

Davenport Bank v. Davenport, 123 U.S., 83

Amoskeag Savings Bank v. Purdy, (1913) 231 U.S. 373

Bank of Redemption v. Boston, (1888) 125 U.S. 60

Woosley, State Taxation of Banks [Chapel Hill, The University of North Carolina Press (1935)], p. 24

Powell, "Indirect Encroachment on Federal Authority by the Taxing Powers of the States," 31 *Harvard Law Review*, 321, 367

This Court held in *People v. Weaver*, *supra*, that § 5219 was concerned with the actual incidence and practical bur-

two institutions and rests on the superficiality that [a] savings and loan share account is legally an equity rather than a deposit debt and being an equity share is comparable to shares of national bank stock. * * * (R. 861a) (Emphasis supplied)

den of the tax. Professor Powell, in 31 *Harvard Law Review*, *supra*, 321, 367, concludes that where there is in fact no substantial economic discrimination it would be absurd to insist that § 5219 has been violated. In the *Hartford* case, *supra*, this Court noted that "no question of the possible equivalence of the two schemes of taxation is presented," (273 U.S. 548, 552) and then referred to "taxing measures which by their necessary operation and effect discriminate against capital invested in national bank shares" (273 U.S. 548, 560), and to the requirement of "approximate equality in taxation" (273 U.S. 548, 556). Professor Woodsley, in *State Taxation of Banks*, says at p 24, that the § 5219 rate of taxation

"* * * must refer to 'the actual incidence and practical burden of the tax upon the taxpayer.' * * *

In the *Tradesmen's National Bank* case [309 U.S. 560] *supra*, this Court, at p 567, referred to § 5219 as prohibiting only those systems of state taxation which discriminate in **r**actical operation against national banking associations or their shareholders as a class and concluded:

"* * * Thus, it is not a valid objection to a tax on national bank shares that other moneyed capital in the state or shares of state banks are taxed at a different rate * * * unless it appears that the difference in treatment results in fact in a discrimination unfavorable to the holders of shares of national banks. (Cases cited)" (Emphasis ours)

In *Hepburn v. School Directors*, *supra*, (1874) 23 Wall (90 U.S.) 480, 485, in attempting to equate the tax burden of a mutual savings bank to the tax burden on national bank stock, it was noted that the competitive question tax-wise was the amount of money that could be placed at

interest by mutual savings banks or national banks; that it was a valid inquiry, to determine how many dollars a dollar value of bank stock commanded in the investment field as compared to a deposit share of a mutual savings bank; and concluded that

• • • *Therefore, some plan must be devised to ascertain what amount of money at interest is actually represented by a share of stock.* • • • (Emphasis added)

The clear import of these authorities is that only when a state tax structure has the effect of placing an investment in a share of national bank stock at a competitive disadvantage is there any tax discrimination within the purview of § 5219. This is in perfect harmony with the purpose of the § 5219 restrictions.

This concept of discrimination was specifically employed by this Court in three cases dealing with the application of § 5219 to savings banks:

Davenport Bank v. Davenport, supra, 123 U.S. 83,

Amoskeag Savings Bank v. Purdy, supra, (1913) 231 U.S. 373, and

Bank of Redemption v. Boston, supra, (1888) 125 U.S. 60.

The *Davenport* case, *supra*, held that a tax upon the paid-up capital of savings banks was equivalent to a tax of the same rate on national bank stock. The *Amoskeag* case, *supra*, engaged the same kind of tax comparative. No discrimination was found in the *Amoskeag* case, *supra*, since the national bank share tax was measured by total capital and surplus and the tax on the savings banks was measured

by value of their surplus and undivided earnings, both taxed at the same rate. In so holding, this Court concluded that § 5219

“ . . . does not require that the scheme of taxation shall be so arranged that the burden shall fall upon each and every shareholder alike, without distinction arising from circumstances personal to the individual.”
(231 U.S. 373, 393-394)

In the *Bank of Redemption* case, *supra*, (though savings banks were considered without the purview of § 5219 as a matter of law), this Court again noted the problem of finding a proper yardstick raised in the *Hepburn* case and noted that proper comparison of the mutual savings banks and national banks would be an asset-to-asset comparative, taking into consideration the deposits of national banks since they constitute employable moneyed capital and since mutual institutions such as savings banks have no stock. [102]

It is surprising to note that the mechanical comparison contended for by the appellant would also require that bank deposits be taxed at 5½ mills rather than 1/25 of one per cent (Br. 58). Thus, if a state bank had the same capital structure as the appellant (i.e., a capital account of approximately \$13 million and deposits of approximately \$283

[102]

Appellant asserts that *Minnesota v. First National Bank of St. Paul*, (1927) 273 U.S. 561, requires the comparison it contends for in this case, i.e., a mechanical comparison of the rate of tax made without determining questions of practical or economic equivalence. However, it is submitted that this Court rejected only the particular method of comparison there used and did not find any practical equivalence between a tax rate of 61½ mills on bank shares valued at 40 per cent and a tax of 3 mills per dollar on the full value of competing moneyed capital in the hands of individuals.

million), the tax would amount to approximately 125 mills upon the state bank shares.^[103] Furthermore, under appellant's mechanical comparison argument, the State of Michigan would have to impose the same rate of tax on federal credit unions and other federal agencies or instrumentalities, although expressly prohibited from taxing the same by act of Congress. This but clearly demonstrates the absurdity of the appellant's position.

It is therefore respectfully submitted that so long as Michigan has imposed a tax on savings and loan association share accounts in an amount equivalent in a practical, economic sense to that imposed upon national bank stock, there is no discrimination against bank shares within the purview of § 5219. The finding of the lower courts and the uncontroverted record in this cause establish such equivalence.

2.

THE STATE OF MICHIGAN IS ENTITLED TO PREFERENTIALLY TAX SAVINGS ACCOUNTS OF SAVINGS AND LOAN ASSOCIATIONS AS COMPARED TO SHARES OF NATIONAL BANK STOCK WITHOUT VIOLATING § 5219. (This is a summary of argument presented on pp 116-168, *infra*.)

Even if we assumed the existence of significant tax discrimination, Michigan's tax treatment of savings and loan

[103]

$$5.5 \text{ mills} + \left(\frac{\$ 13,000,000}{\$283,000,000} \times \frac{5.5 \text{ mills}}{x} \right) = 5.5 \text{ mills} + 119.7 \text{ mills} = 125.2 \text{ mills or } 12.52\%$$

associations would not violate § 5219. The decisions of this Court interpreting and applying § 5219 clearly recognize that so long as Michigan taxes the major portion of all moneyed capital in substantial equality with bank shares, it can grant exemption or preferential treatment of the remaining portion of moneyed capital, if exemption or preference is founded on just reason and so long as such exemption or preference does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks.

This rule of "partial exemption" has been consistently applied to mutual savings banks and savings and loan associations to exclude them as a matter of law from the purview of § 5219.

The following decisions clearly establish the partial exemption rule—prescribe its limitations—and bring savings and loan associations within its scope:

People v. Commissioners, 4 Wall (71 U.S.) 244, 256

Hepburn v. School Directors, supra, (1874) 23 Wall (90 U.S.) 480, 485

Adams v. Nashville, (1877) 95 U.S. 19, 22

Boyer v. Boyer, (1885) 113 U.S. 689, 693

Mercantile Bank v. New York; (1887) 121 U.S. 138, 145, 161

National Bank of Wellington v. Chapman, 173 U.S. 205, 214

Aberdeen Bank v. Chehalis County, (1897) 166 U.S. 440, 460

Bell's Gap Railroad Co., v. Pennsylvania, 134 U.S. 232, 237

Davenport Bank v. Davenport, *supra*, 123 U.S. 83, 86

Bank of Redemption v. Boston, *supra*, 125 U.S. 60, 67-68

Mercantile National Bank v. Hubbard, *supra*, (1899) 98 F. 465, 471; *aff'd sub nomine Lander v. Mercantile National Bank*, *supra*, 186 U.S. 458

Hoenig v. Huntington National Bank, (1932) (C.C.A. 6th Circuit) 59 F. 2d 479; *Cert. denied* 287 U.S. 648

First National Bank of Shreveport v. Louisiana Tax Commission, (1933) 289 U.S. 60

People v. Goldfogle, (1924) 205 N.Y.S. 870, 123 Misc. 399 (*aff'd by App. Div.* 211 N.Y.S. 85)

First National Bank of Glendive v. Dawson County, (1923) 66 Mont. 321; 213 P. 1097

Merchants' National Bank of Glendive v. Dawson County, (1933) 93 Mont. 310; 19 P. 2d 892

Consolidated National Bank v. Pima County, 5 Ariz. 142, 48 P. 291

The leading § 5219 case of *Mercantile Bank v. New York*, *supra*, 121 U.S. 138, quoted and relied upon extensively in *Hartford*, *supra*, 273 U.S. 548, applied the partial exemption rule to mutual savings banks and determined that the exemption and preferential treatment accorded some moneyed capital in New York did not violate § 5219. Counsel for the *Mercantile Bank*, relying upon *Boyer v. Boyer*, *supra*, 113 U.S. 689, argued that the partial exemption rule was not applicable because the exemption of moneyed capital in New York was

“ . . . of a ‘very material part relatively’ of the

whole, and renders the taxation of national bank shares void.” [121 U.S. 138, 145]

No tax was imposed by New York on savings banks and municipal bonds. By reliance on *Hepburn v. School Directors*, *supra*, 23 Wall 480, this Court determined that § 5219 was not thereby violated and stated, at p161:

“• • • The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon *just reasons*, and not operate as an unfriendly discrimination against investments in national bank shares. • • •” (Emphasis supplied)

The *Hartford* (273 U.S. 548) and *Boyer* (113 U.S. 689) cases, *supra*, were concerned with total exemption of moneyed capital other than that represented by bank stock and did not in any way involve or purport to overrule the partial exemption cases.

This established rule of partial exemption founded upon public policy considerations has not been altered or changed by any decisions involving § 5219. Furthermore, this judicially established rule, as applied to savings banks, was before Congress in the proceedings dealing with the 1923 amendments to § 5219. It also appears to have been recognized and applied by the Congress when it required the states to tax federal savings and loan associations under the provisions of the *Home Owners Loan Act of 1933*[104] “the same as other mutual thrift institutions.”[105] It is signifi-

[104]

June 13, 1933, ch. 64, § 1, 48 Stat. 128; 12 U.S.C. 1461, et seq.

[105]

June 13, 1933, ch. 64, § 5, 48 Stat. 132; as last amended Sept. 2, 1958, Pub. L. 85-857, § 13 (f), 72 Stat. 1264; 12 U.S.C. 1464 (h).

cant also that Congress, after creating the federal savings and loan associations under the *Home Owners Loan Act of 1933* and establishing their purpose and identity as that of a "mutual thrift institution," provided for the insurance of savings share accounts of federal and state savings and loan associations, homestead associations and cooperative banks by the *Federal Savings and Loan Insurance Corporation* legislation^[106] in much the same way as it provided for the insurance of deposits in banking institutions. It is submitted that such legislation and the legislation creating and providing for the taxation of other agencies and instrumentalities involved in the home mortgage market, demonstrates a congressional recognition and affirmance of the proposition that savings and loan associations are deemed by Congress to be serving a particular public need in the thrift savings and home financing field. Furthermore, there is expressed in such legislation the intent that savings and loan associations and other like mutual institutions, such as the **national mortgage associations**^[107] and **federal credit unions**^[108] are not to be compared to national banking associations for the purpose of determining the validity of state tax systems.

When Congress permitted the states to tax federal savings and loan associations in the same manner as they taxed other mutual thrift institutions, it provided a different rule of taxation for stock corporations having private stockholders which were competitive with the busi-

[106]

June 27, 1934, ch. 847, title IV, § 401, 48 Stat. 1255; July 16, 1952, ch. 883, 66 Stat. 727; 12 U.S.C. § 1724 et seq.

[107]

June 27, 1934, ch. 847, title III, § 301, 48 Stat. 1252; as last amended Aug. 2, 1954, ch. 649, title II, § 201, 68 Stat. 612; 12 U.S.C. 1716, et seq.

[108]

June 26, 1934, ch. 750, § 1, 48 Stat. 1216; 12 U.S.C. 1751, et seq.

ness of National banks. Thus, in providing for the taxation of joint stock land banks^[109] and agricultural credit corporations,^[110] Congress, required these institutions to be taxed by the states in accordance with the restrictions contained in § 5219. We submit that the partial exemption rule not only is an established interpretation and application of § 5219 by this Court, but it is also one known and adopted by Congress and also a rule in accordance with the continuing express public policy of the Congress in the thrift savings and home finance field. *Mercantile National Bank v. Hubbard*, *supra*, (Ohio ND) 98 F. 465 (affirmed sub nomine *Lander v. Mercantile National Bank*, *supra*, 186 U.S. 458), first applied the partial exemption rule (previously applied to savings banks) to savings and loan associations. The Court there found no material differences between savings banks and savings and loan associations (98 F. 465, 471). This rationale constituted the basis of the decision in *Hoenig v. Huntington National Bank*, *supra*, (CCA 6) 59 F. 2d 479, certiorari denied 287 U.S. 648, since both mutual savings banks and savings and loan associations serve the same public policy, e.g., thrift savings and home-ownership. This was accepted and followed in *First National Bank of Shreveport v. Louisiana Tax Commission*, *supra*, 289 U.S. 60; by the New York courts in *People v. Goldfogle*, *supra*, 205 N.Y.S. 870, 123 Misc. 399, affirmed by App. Div., 211 N.Y.S. 85; by the Supreme Court of Montana in *First National Bank of Glendive v. Dawson County*, *supra*, 66 Mont. 321, 213 P. 1097 and in *Merchants' National Bank of Glendive v. Dawson County*, *supra*, 93 Mont. 310, 19 P. 2d 892; and by the Supreme Court of Arizona in *Consolidated National Bank v. Pima County*, *supra*, 5 Ariz. 142, 48 P. 291.

[109]

July 17, 1916, ch. 245, title I, § 26, 39 Stat. 380; 12 U.S.C. 932.

[110]

Mar. 4, 1923, ch. 252 title II, § 211, 42 Stat. 1469; 12 U.S.C. 1261.

It is thus too late in the day for the appellant to assert that the **partial exemption** rule, as applied to mutual savings banks and savings and loan associations, is based upon superficialities in the structure or organization of such institutions or the lack of their investment activity in various phases of the banking business (*Hoening v. Huntington National Bank, supra*, (C.C.A. 6) 59 F. 2d 479, certiorari denied 287 U.S. 648; and *Bank of Redemption v. Boston, supra*, 125 U.S. 60).

This established partial exemption rule in the savings bank cases is not dependent upon factual competition or upon details concerning the organization of mutual savings banks as compared to savings and loan associations.

The appellant, in arguing that the **partial exemption** rule is not applicable to the kind of savings and loan associations doing business in Michigan in 1952 and does not apply to the competitive situation in Michigan as pertains to national banks and to these associations, forgets that each of the cases involving the exemption or preferential treatment of mutual savings banks or savings and loan associations was litigated in an effort to distinguish previous decisions of this Court upon the theory that either the nature, character, or purpose of the institutions or their competitive position had changed. This effort was expressly referred to in *Bank of Redemption v. Boston, supra*, 125 U.S. 60, 67-68. Counsel in *Davenport Bank v. Davenport, supra*, 123 U.S. 83, argued the inapplicability of the rule pertaining to savings banks in New York, as stated in *Mercantile Bank v. New York, supra*, 121 U.S. 138, 160. This Court, however, in the *Davenport* and *Redemption* cases; as in *Mercantile*, in granting the partial exemption, referred not to the alleged activity of the associations, but to the nature and purpose of mutual savings banks.

In *Bank of Redemption v. Boston*, *supra*, 125 U.S. 60, 67-68, this Court, against argument that the Massachusetts savings banks were different from the New York savings banks in the *Mercantile* case or the Iowa banks in the *Davenport* case, again referred to the proposition that mutual savings banks **are substantially institutions organized for the purpose of investing the savings of small depositors, "which forecloses further" discussion.**" (125 U.S. 60, 68)

Appellant's assertion that the partial exemption rule is dependent upon the lack of **factual** competition between the moneyed capital of such institutions and that of national banking associations encounters other difficulties. It does not jibe with the language employed by this Court on numerous occasions in interpreting § 5219; it is inconsistent with congressional treatment of federal savings and loan associations by the *Home Owners' Loan Act of 1933* and various agencies and instrumentalities of the federal government that Michigan is prohibited from taxing, such as federal credit unions and national farm mortgage associations; it requires the *Hartford* case, *supra*, 273 U.S. 548, to be read as overruling the *Mercantile* case, *supra*, 121 U.S. 138; it ignores the actual proof of factual competition in some of the partial exemption cases, including *Bank of Redemption v. Boston*, *supra*, 125 U.S. 60, and *Hoenig v. Huntington National Bank*, *supra*, (C.C.A. 6th Circuit) 59 F. 2d 479.

In further attempting to circumvent the application of the **partial exemption** rule, the appellant insists that there exists no just reason for placing savings and loan associations in a special tax category. Appellant here ignores that there is an absence of any change in the basic purpose or policy served by the Michigan savings and loan associations since the adoption of Act 50 of the Michigan Public Acts of

1887. It is contrary to the fact that the federal savings and loan associations came into being in 1933 and were created for the same public policy purpose as the Michigan savings and loan associations, namely, for thrift saving and home financing purposes. The record is completely void of any showing that the character, nature and purpose of these institutions has materially changed. Furthermore, analysis of the pertinent statutory provisions controlling each institution clearly indicate that the essential nature and basic purpose of these mutual institutions is the same as it always has been — to carry out an established public policy of promoting thrift savings and home ownership.

It is eminently clear that the mutual savings bank and savings and loan association cases applying the partial exemption rule are applicable to the case at bar and dispositive of the issue here presented.

3.

THE CAPITAL OF SAVINGS AND LOAN ASSOCIATIONS, BEING CONSTITUTED OF SAVINGS SHARE ACCOUNTS, INVESTED IN THE NARROW AND RESTRICTED FIELD OF FIRST MORTGAGE HOME FINANCING, IS NOT IN "SUBSTANTIAL COMPETITION" WITH THE CAPITAL OF NATIONAL BANKS WITHIN THE PURVIEW OF § 5219. (This is a summary of the argument presented at pp 169-194, *infra*.)

In consistently ruling out savings and loan associations and mutual savings banks from consideration under § 5219, this Court was well aware of two things: (1) That mutual savings banks and savings and loan associations were restricted by legislation to very limited activity and were not permitted to engage in the banking business; and (2) that

they were organizations whose business was the direct and active use of the pooled funds of their members, as contrasted to national banks which, being commercial profit stock corporations, utilized moneys from sources other than their investors to carry on their general banking business. *First National Bank of Shreveport v. Louisiana Tax Commission, supra*, (1933) 289 U.S. 60-64.

Appellant insists that there exists a keen competition for residential mortgages, in which the appellant invests its deposit money, savings and loan associations their savings share accounts. This deposit money is not the "capital" of appellant within § 5219. Appellant is a stock company while savings and loan associations are nonstock mutual institutions.

How can fundamentally different institutions be said to be in "substantial competition" within the meaning of § 5219? How can a nonstock entity that cannot accept deposits compete with the capitalized stock corporation in the latter's employment of deposit moneys?

Appellant does not attempt to answer these questions but **assumes** that savings and loan associations are in **substantial competition** with national banks because both institutions operate in the home financing field and ~~they~~ compete for savings deposit money. Appellant derives this erroneous assumption from the fact that it employs a part of its assets (a portion of its deposit moneys) in the home financing field, traditionally engaged in by savings and loan associations. In support of this assumption it points to the substantial growth of savings and loan associations but declines mention of the rapidity and extensiveness of its own growth.^[111]

[111]

Appellant bank grew from \$67,601,000 in 1941 to about \$309,000,000

Appellant thus poses the issue of "substantial competition" as pertaining only to the flow of investment money in areas competitive with the business of national banks. It urges this Court to conclude that there is substantial competition within the purview of § 5219 if a substantial amount of moneyed capital as compared to the capital account of the appellant bank is invested in a segment of the banking business (the bank's use of deposit money in home financing) (Br. 9-18).

Appellant's position completely ignores the established rule that substantial competition with the business of national banks presents a mixed question of fact and — law. *First National Bank v. Hartford, supra*, (1927) 273 U.S. 548, 552.

Assuming discriminatory taxation of bank shares (discriminatory in effect and in fact — not merely in rate), and further assuming the factual presence of competition substantial in amount but not of the kind or quality which is hostile and unfriendly toward national banks, the business of national banks, or the owners of national bank stock, such competition is **unsubstantial** as a matter of law. It does not jeopardize or injure the national banking system, and § 5219, specifically enacted for the protection of that system, is not therewith concerned.

Clearly, "substantial competition" does not mean competition, however keen or large in amount, with a limited segment of the national banking business. It means competition, of a serious character, with the **major or characteristic** functions of the national banking business. This

in 1952 and approximately \$442,000,000 in 1956, or $4\frac{1}{2}$ times its original size in the 11-year interval between 1941 and 1952 and $6\frac{1}{2}$ times its original size in the 15-year interval between 1941 and 1956. (Df. Ex. 202; R. 672a, 1318a-1319a).

interpretation and application of "substantial competition" has been the concern of this Court and others in deciding the § 5219 cases. Viewing "substantial competition" in this light, it is of course necessary to examine and ascertain the nature and character of the institutions competing, as well as the employment of their capital, to see what phases of the business of national banks could be adversely affected if such moneyed capital were tax exempt or taxed at a lower rate than national bank stock. This was well recognized by this Court in the *Shreveport* case [289 U.S. 60], *supra*, where its realistic approach to this problem resulted in a holding that because savings and loan associations were not comparable to, and were of a completely different character than, national banking associations, as a matter of law they could not be in substantial competition.

In the case at bar, the Michigan Supreme Court specifically found:

"The record in this appeal discloses that Michigan building and loan associations operated in a narrow, restricted field, are markedly different in character, purpose and organization from national banks, and are not in 'substantial competition' with national banks." (R. 1358)

Even if substantial competition between savings and loan associations (or other mutual thrift institutions) and national banking associations could pose a purely factual question, the facts in this cause still do not establish such competition. This is particularly true if appellant's interpretation of the *Hoenig* case [59 F. 2d 479], *supra*, is adopted, i.e., that there was a lack of factual competition because of the difference between the savings and loan

associations of Ohio in 1926 and the national banking associations of that day.[112]

Substantial competition as a factual proposition was further found **not** to exist by the appellees' expert witness in banking and finance, for the business of the appellant national bank and other banking associations in 1952 did not sufficiently overlap or compete with the business of savings and loan associations. (R/854a-855a)[113]

In reference to "substantial competition," again the appellant urges as immaterial all questions concerning the nature or character of the allegedly competing moneyed

[112].

This is clearly indicated by an analysis of the *Hoenig* "facts," infra, pp 142-147 and Addendum A, p 211:

[113]

Appellees' expert witness testified that savings and loan associations and national banks, in a factual, economic sense, were not in substantial competition within the purview of § 5219. He based this conclusion upon the fact that the two types of institutions were not comparable; that each was involved in a different phase of the financial business; that residential real estate loans of national banks represented only 20 per cent of their total assets while such loans represented almost all the assets of the savings and loan associations; that national banking associations loaned deposit moneys in the residential mortgage field while savings and loan associations loaned savings share account moneys; that national banks concentrated in the F.H.A. and V.A. mortgage field because of liquidity requirements while four-fifths of the savings and loan mortgages were of the conventional type, with a longer maturity or for a larger amount than permitted by many national banks; that national banks loaned a portion of their deposit moneys in the residential mortgage field while savings and loan associations could not accept deposits; that the purpose and function of national banks and of savings and loan associations were too different and their area of common operations too narrow to permit substantial competition in an economic sense.

capital and the institutions employing the same. If such considerations were immaterial, bank deposits and the funds and stock of various agencies and instrumentalities of the United States government expressly exempt from state taxation would have to be considered as employed in substantial competition with the business of appellant and other national banking associations. **As to its own deposits, appellant would be in substantial competition with itself.**

This but emphasizes this Court's wisdom in the *Hartford* case [273 U.S. 548], *supra*, when it said that the question of substantial competition is a mixed one of both fact and law.

In light of the above, it is clear that the appellant has not made out a case of substantial competition.[114]

4.

APPELLANT HAS FAILED TO MEET ITS DISTINCT BURDEN OF ESTABLISHING BY CLEAR AND COGENT EVIDENCE AND AUTHORITY THAT ACT 9 OF THE MICHIGAN PUBLIC ACTS OF 1953, TO THE EXTENT IT SUBJECTS APPELLANT'S STOCK TO TAXATION, IS UNCONSTITUTIONAL. This is a summary of the argument presented at pp 93-96, *infra*.

This Court hesitates to declare state legislation unconstitutional. In reviewing cases dealing with state taxation,

[114]

As a factual proposition, appellant has not established that the capital of savings and loan associations in Michigan constitutes a relatively material part of the capital employed in competition with the business of banking in Michigan. This, alone, disposes of "substantial competition."

it has constantly recognized the necessity of state systems of taxation and the need of state revenues to assure proper discharge of governmental functions. A primary purpose of § 5219, which allows the states to tax national bank shares, demonstrates congressional recognition of state revenue demands.

That appellant must prove its claim of unconstitutionality is clear. The Michigan Supreme Court below stated:

“Appellant, as a taxpayer claiming immunity from the tax, had the burden of establishing its right to the exemption. There is no presumption of unlawful discrimination or that Michigan PA 1953, No. 9, imposed a tax ‘at a greater rate than [was] assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks.’ To meet this test, appellant had to introduce proof that was ‘manifest.’ (See *Hepburn v. School Directors*, 23 Wall [640] [90 U.S.] 480 [23 L ed 112], and *Norton Company v. Department of Revenue of Illinois*, 340 U.S. 534 [71 S Ct 377, 95 L ed 517].) Plaintiff failed to meet this burden of proof.” (R. 1358-1359)

Though appellant urges that the result it is seeking in this cause is “tax equality” with its competitors, it is in fact asking that the only tax imposed upon its business be declared unconstitutional by this Court. If “tax equality” were its sole concern, the appellant would not raise its voice in protest of Act 9 of the Michigan Public Acts of 1953, since this statute was enacted to achieve a realistic and practical “tax equality” among Michigan financial institutions. This it did! Does appellant absent-mindedly call for the garment it wears?

THE ARGUMENT

1.

THE PURPOSE OF § 5219

Mercantile National Bank v. New York, supra, (1887)
121 U.S. 138,

is considered the leading § 5219 share tax case. This Court there stated at pp 154-155:

“The key to the proper interpretation of the act of Congress is its policy and purpose. The object of the law was to establish a system of national banking institutions, in order to provide a uniform and secure currency for the people, and to facilitate the operations of the Treasury of the United States. The capital of each of the banks in this system was to be furnished entirely by private individuals; but, for the protection of the government and the people, it was required that this capital, so far as it was the security for its circulating notes, should be invested in the bonds of the United States. These bonds were not subjects of taxation and neither the banks themselves, nor their capital, however invested, nor the shares of stock therein held by individuals, could be taxed by the States in which they were located without the consent of Congress, being exempted from the power of the States in this respect, because these banks were means and agencies established by Congress in execution of the powers of the government of the United States. It was deemed consistent, however, with these national uses, and otherwise expedient, to grant to the States the authority to tax them within the limits of a rule prescribed by the law. *In fixing those limits it became*

necessary to prohibit the States from imposing such a burden as would prevent the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote. The business of banking, including all the operations which distinguish it, might be carried on under state laws, either by corporations or private persons, and capital in the form of money might be invested and employed by individual citizens in many single and separate operations forming substantial parts of the business of banking. A tax upon the money of individuals, invested in the form of shares of stock in national banks, would diminish their value as an investment and drive the capital so invested from this employment, if at the same time similar investments and similar employments under the authority of state laws were exempt from an equal burden. The main purpose, therefore, of Congress, in fixing limits to state taxation on investments in the shares of national banks, was to render it impossible for the State, in levying such a tax, to create and foster an unequal and unfriendly competition, by favoring institutions or individuals carrying on a similar business and operations and investments of a like character.[115] The language of the act of Congress

[115]

This sentence is repeated in 51 Am. Jur., Taxation, § 269, and cited in support thereof are:

First Nat. Bank v. Hartford, *supra*, 273 U.S. 548

First Nat. Bank of Guthrie Center v. Anderson, *supra*, (1926) 269 U.S. 341

Des Moines Nat. Bank v. Fairweather, 263 U.S. 103

National Bank of Wellington v. Chapman, *supra* 173 U.S. 205

Talbott v. Silver Bow County, 139 U.S. 438

Palmer v. McMahon, 133 U.S. 660

Stanley v. Albany County, 121 U.S. 535

Mercantile Nat. Bank v. New York, *supra*, (1887) 121 U.S. 138

is to be read in the light of this policy.” (Emphasis added) [Quoted in *Ameskeag Savings Bank v. Purdy*, *supra*, (1913) 231 U.S. 373]

The purpose of § 5219 as stated in the *Mercantile* case, *supra*, has been consistently followed and given expression by this Court in numerous cases, including *First National Bank of Guthrie Center v. Anderson, County Auditor, et al.*, *supra*, 269 U.S. 341 (decided subsequent to the 1923 amendment excluding personal investments by individual citizens not engaged in the banking or investment business). In the *Guthrie Center* case, this Court held that the proviso added to the share tax provision of § 5219 in 1923 (History of § 5219, *supra*, p. 23) did not change the meaning of that section as previously interpreted by decisions of this Court. The effect of the 1923 amendment was stated as follows in the *Guthrie Center* case, *supra*, at 269 U.S. 341, 350:

“ . . . In *Mercantile National Bank v. New York*, *supra*, where the terms and purpose of the restriction [§ 5219] were much considered, it was distinctly held that the words ‘other moneyed capital’ must be taken as impliedly limited to capital employed in **substantial competition with the business of national banks**. In later cases that definition was accepted and given effect as if written into the restriction. It, of course, would exclude bonds; notes or other evidences of indebtedness when held merely as personal investments by individual citizens not engaged in the banking or investment business, for capital represented by this class of investments is not employed in substantial competi-

Boyer v. Boyer, *supra*, 113 U.S. 689

H.A.S. Loan Service v. McColgan, 21 Cal. (2d) 518, 133 P. (2d) 391, 145 A.L.R. 349

McHenry v. Downer, 116 Cal. 20, 47 P. 779, 45 L.R.A. 737

tion with the business of national banks. Thus in legal contemplation and practical effect the restriction was the same before the reenactment as after. . . . (Emphasis and bracketed material added)

2.

THE APPELLANT HAS THE BURDEN OF ESTABLISHING BY CLEAR AND COGENT EVIDENCE THAT ACT NO. 9, MICHIGAN PUBLIC ACTS OF 1953, TO THE EXTENT IT SUBJECTS APPELLANT'S STOCK TO TAXATION, IS INVALIDATED BY § 5219.

It is axiomatic that a plaintiff must prove its case and that this Court is not prone to declare state taxing statutes unconstitutional.

Norton Co. v. Department of Revenue, 340 U.S. 534:

“ . . . The general rule, applicable here, is that a taxpayer claiming immunity from a tax has the burden of establishing his exemption.[116]

Allegations of competition or discrimination or substantiality of either is not sufficient. It is incumbent upon appellant to meet each factual requirement of § 5219 by cogent, convincing and competent evidence.

The nature of the specific burden of proof imposed on appellant by the requirements of § 5219 is illustrated by the following decisions:

[116]

Compania General v. Collector, 279 U.S. 306.

First National Bank of Shreveport v. Louisiana Tax Commission, supra, (1933) 289 U.S. 60

Georgetown National Bank v. McFarland, (1927) 273 U.S. 568

Hills v. Exchange Bank, (1881) 105 U.S. 310

Aberdeen v. Chelalis County, supra, (1897) 166 U.S. 440

Bank of Commerce v. Seattle, (1897) 166 U.S. 463

Amoskeag Savings Bank v. Purdy, supra, (1913) 231 U.S. 373

Commercial Bank v. Chambers, (1901) 182 U.S. 556

The appellant has the distinct burden of proving:

(1) That the "capital" (savings share accounts) of savings and loan associations is "other moneyed capital";

(2) That the "capital" of savings and loan associations employed in competition with appellant represents a relatively material part of "other moneyed capital" employed in competition with the business of national banks;

(3) That a substantial amount of this "other moneyed capital" is employed in **substantial** competition with the business of national banks;

(4) That the tax imposed upon national bank shares in its practical operation and effect discriminates against national bank share capital and in favor of a relatively material part of "other moneyed capital" employed in substantial competition with the national banks and thereby creates an unfriendly and unequal competition against investors in national bank stock;

(5) That an interest of an individual in his savings share account in a savings and loan association is more than a personal investment and that it is employed by him in substantial competition with the banking or investment business;

(6) That the exemption or preferential treatment of the alleged competitive moneyed capital is not in accordance with established public policy and is thus in conflict with the spirit and purpose of § 5219.

The purpose of § 5219 is to protect solely investors in national bank shares and thus the business of national banks from unequal and unfriendly competition. Only to this end were states prohibited from imposing discriminatory taxation on national bank stock in favor of a relatively material part of other moneyed capital in substantial competition with the business of national banks.

Appellant has produced no evidence that the tax discrimination it here complains of has the practical operation and effect of discriminating against investors in national bank shares by creating unfriendly and unequal competition against investments in national bank shares. Since admittedly economic and competitive equivalents are being subjected to equivalent taxation, there cannot be discrimination within the meaning, purpose and purview of § 5219. On this point alone the appellant has not brought its case within the restrictions of § 5219.

3.

THE MICHIGAN TAX STRUCTURE DOES NOT DISCRIMINATE AGAINST NATIONAL BANK STOCK WITHIN THE MEANING OF SECTION 5219.

A. Introductory Considerations .....	96

The question of discrimination within the purview of § 5219 is closely related to the purpose sought to be accomplished by Congress in enacting § 5219. In fact, the question of discrimination within the meaning of § 5219 cannot logically be isolated from the other tests employed in determining the validity of a share-tax permitted by § 5219. If savings and loan associations may be exempted or preferred tax-wise under the **partial exemption** rule based on public policy (*infra*, pp 116-138) or on Congressional manifestation of intent in *pari materia* legislation (*infra*, pp 155-168); there cannot be substantial competition by such loan associations (*infra*, pp 169-194) within the purview of § 5219, and neither can there be discrimination within the meaning of § 5219.

It is the appellees' position that, as a matter of law, discrimination cannot exist within the meaning of § 5219, inasmuch as savings and loan associations are entitled to exemption under the **partial exemption** rule and, therefore, cannot be in "substantial competition with the business of national banks."

Assuming, however, for the sake of an argument, that the state of Michigan is required to tax savings and loan associations equivalently to national banks, what would be the tests to apply in determining such an equivalence?

In answer, we must first inquire: What are the re-

quirements of § 5219 in regard to the tax comparison of these two distinctly different types of institutions that were subjected to various different taxes under the state's tax structure in 1952?

B. Discrimination within the meaning of § 5219 is only that discrimination which, in practical operation and effect, fosters and creates an unequal and unfriendly competition with the business of national banks and thereby results in the imposition of a genuine economic detriment to an investment in national bank stock.

Clearly, the intent of Congress is to protect investments in national bank stock and to that end the restrictions in § 5219 were prescribed. This Court has consistently recognized this and therefore has framed the issue of discrimination to be a determination of whether the tax structure of a state patronizes a relatively material part of other moneyed capital coming into substantial competition with the business of national banks, the practical operation and effect of such patronage being to create an unfriendly and unequal competition between investments in other moneyed capital and that of national banking stock.

Notwithstanding this, the appellant urges that the only test of equivalent tax burden is the **rate** of the intangibles tax imposed upon its stock measured by its capital account (**not market value**), as compared to the **rate** on a savings share account measured by withdrawal value plus an aliquot part of the legal reserves and undivided profits (Br. 47-51).

It must be appreciated at the outset, appellant's insistence to the contrary (Br. 47-52), that a share tax per-

mitted by § 5219 is not measured by **rate** alone. A long and consistent line of decisions under § 5219 developed the proposition that it is the **effect** of the tax, not merely its **rate**, which is controlling. This was recognized in

People v. Weaver, supra, (1879) 100 U.S. 539.

In that case, the plaintiff successfully insisted that § 5219 searches out the **actual incidence** and the **practical burden** of the tax on the taxpayer. This has been the settled construction of § 5219.

Iowa-Des Moines National Bank v. Bennett, (1931)
284 U.S. 239

Amoskeag Savings Bank v. Purdy, supra, (1913) 231
U.S. 373

This Court considered very carefully the question of discrimination under § 5219 in

*First National Bank of Guthrie Center v. Anderson,
County Auditor, et al., supra*, (1926) 269 U.S. 341,

and

*Tradesmen's National Bank of Oklahoma City v.
Oklahoma Tax Com., supra*, (1940) 309 U.S. 560,

and referred to the test of discrimination in

First National Bank v. Hartford, supra, (1927) 273
U.S. 548.

It was stated in the *Guthrie Center* case, *supra*, 269 U.S. 341, 438:

"The restriction [RS 5219] is not intended to *exact*

mathematical equality in the taxing of national bank shares and such other moneyed capital, nor to do more than require such *practical equality* as is reasonably attainable in view of the differing situations of such properties. But every clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks is a violation of both the letter and spirit of the restriction.” (Emphasis added)

The most recent case dealing with the comparatives to be used in determining discrimination under § 5219 is the case of

Tradesmen's National Bank of Oklahoma City v. Oklahoma Tax Commission, supra, (1940) 309 U.S. 560.

The bank there urged that the tax system was discriminatory against taxable net income of the national bank upon which an excise tax was computed because the tax base included income from federal securities, while other corporations were permitted to exclude such income in computing their taxable net income. The court rejected this claim of discrimination by reliance on the share tax decisions previously decided. This court there stated at p 567:

“A consideration of the course of judicial decision on R.S. 5219 and its predecessors can leave no doubt that the various restrictions it places on the permitted methods of taxation are designed to prohibit only those systems of state taxation which discriminate in practical operation against national banking associations or their shareholders as a class. Compare *First*

National Bank v. Hartford, 273 U.S. 548; *Amoskeag Savings Bank v. Purdy*, 231 U.S. 373; *Covington v. First National Bank*, 198 U.S. 100; *Lionberger v. Rouse*, 9 Wall. 468. Thus it is not a valid objection to a tax on national bank shares that other moneyed capital in the state or shares of state banks are taxed at a different rate or assessed by a different method unless it appears that the difference in treatment results in fact in a discrimination unfavorable to the holders of the shares of national banks: *Amoskeag Savings Bank v. Purdy*, 231 U.S. 373; *Covington v. First National Bank*, 198 U.S. 100. * * * (Emphasis added, except cases)

The discrimination test referred to in the *Guthrie Center* case, *supra*, and in the *Tradesmen's National Bank* case, *supra*, is followed in the *Hartford* case, *supra*. In that case it was again noted that the discrimination question posed by § 5219 related to the **actual practical effect** of the tax burden on other moneyed capital coming into substantial competition with the business of national banks and investment in national bank stock. This Court noted in the *Hartford* decision, *supra*, that "**approximate equality in taxation**" is the principal concern of § 5219. In fact, this Court closed its decision by stating, on pp 560, 561:

"* * * But a consideration of the entire course of judicial decision on this subject can leave no doubt that state legislation and *taxing measures* which by their *necessary operation and effect discriminate* against capital invested in national bank shares in the manner described^[117] are intended to be forbidden. * * * (Emphasis added)

[117]

State of Minnesota v. First National Bank of St. Paul, (1927) 273 U.S. 561, did not alter or change the test used to deter-

Professor Woosley, in *State Taxation of Banks, supra*, at p 24, after analyzing this Court's § 5219 cases, arrives at this conclusion:

"* * * Since the restriction in § 5219 does not require that the state shall apply the same mode of taxation to national bank shares that it applies to other property provided no injustice, inequality, or unfriendly discrimination arises therefrom, *the rate of taxation must refer to 'the actual incidence and practical burden of the tax upon the taxpayer.'* * * *"
(Citing *Covington v. First National Bank of Covington*, 198 U.S. 100 (1905) and *Amoskeag Savings Bank v. Purdy* 231 U.S. 373, (1913).) (Emphasis added)

After a comparable analysis of the applicable § 5219 cases, Professor Powell, in "Indirect Encroachment on Federal Authority by the Taxing Powers of the States," 31 *Harvard Law Review*, 321, 367, concludes:

"* * * So long as substantially equivalent burdens are imposed on all other economic values by taxation of tangible property and of the capital and franchises of corporations, *it would be absurd to insist that the exemption of one or more of the legal forms of property in which those values may be represented, results in taxing shares in national banks at a greater rate than that imposed on other moneyed capital.* The rule of the *Mercantile Bank Case* practically comes down

mine discrimination under § 5219, but did find that a tax rate of 67 mills in 1921 and 61½ mills in 1922 on bank shares valued at 40 per cent could not be considered the practical equivalent of a tax of 3 mills per dollar on the full valuation of competing moneyed capital in the hands of individuals. Thus, in the *Minnesota* case, *supra*, this Court rejected only the particular method of comparison used to arrive at equivalence.

to a disregard of *formal legal discrimination* where there is in fact no *substantial economic discrimination*." (Emphasis added).

It is respectfully submitted that in line with the express purpose of § 5219, as a factual proposition in the language of this Court in *Amoskeag Savings Bank v. Purdy, supra*, (1913) 231 U.S. 373:

"... it was incumbent upon plaintiff in error to show affirmatively that the New York [Michigan] taxation system discriminates in fact against the holders of shares in the national banks, before calling upon the courts to overthrow it; and no such showing has been made."

The appellees have produced evidence concerning the practical operation and effect of the Michigan tax structure on national bank shares and alleged competing moneyed capital in the form of savings and loan share accounts. Appellees have affirmatively established by uncontradicted testimony that the **Michigan tax structure in practical operation and effect does not discriminate** against owners of national bank stock or the business of national banks; but in fact imposes an equivalent or a heavier burden on the alleged other moneyed capital—savings and loan share accounts—employed by savings and loan associations in the residential mortgage business than it does on other moneyed capital (bank deposits) of appellant which appellant employs in the same general way. Furthermore, the methods of comparison used (in establishing that the Michigan tax structure in practical operation and effect does not discriminate against owners of national bank shares) are in accord with this Court's discussions and resolutions of the problem of comparing a mutual nonstock institution (a savings bank) with a

commercial stock company, (a national banking association).

Davenport Bank v. Davenport, supra, 123 U.S. 83

Amoskeag Savings Bank v. Purdy, supra, (1913) 231
U.S. 373

Bank of Redemption v. Boston, supra, (1888) 125
U.S. 60

To the same general effect is the test referred to in

Hepburn v. School Directors, supra, (1874) 23 Wall.
(90 U.S.) 480

- C. The equivalent tax burden required by § 5219 is met by an asset or a capital account comparison.

In

Hepburn v. School Directors, supra, (1874) 23 Wall.
(90 U.S.) 480,

the Court noted the problem involved in attempting to equate the tax burden of a mutual savings bank to the tax burden on a share of bank stock. The particular problem before the Court was comparing the tax on money at interest with a tax on a share of bank stock. This Court stated as follows, in regard thereto, 23 Wall. 480, 481:

“But even if it were true that these shares can only be taxed as money at interest is, the result contended for would not necessarily follow. The money invested in a bank is not money put out at interest. The money

of the bank is so put out and the share of the shareholder represents his proportion of that money. What the amount of this share is, must, in some form, be ascertained in order to determine its taxable value. If the nominal or par value of the stock necessarily indicated this amount, there might be some propriety in making that the taxable value but, as all know, such is not the case. The available moneyed capital belonging to a bank may be diminished by losses or increased by accumulated profit. *Therefore, some plan must be devised to ascertain what amount of money at interest is actually represented by a share of stock.*
“ . . . ” (Emphasis added)

The Cases of

Davenport Bank v. Davenport, supra, 123 U.S. 83,
Amoskeag Savings Bank v. Purdy, supra, (1913)
231 U.S. 373, and

Bank of Redemption v. Boston, supra, (1888) 125
U.S. 60

involved the problem of comparing taxes on mutual savings banks with the share tax under § 5219. In the *Davenport* case, *supra*, the Court recognized that Congress never intended that the states “should abandon systems of taxation . . . in order to make the taxation conform to the system of taxing the national banks upon the shares of their stock in the hands of their owners.” It held that a tax upon the paid-up capital of savings banks *was* equivalent to a tax of the same rate on national bank shares.

If we treat a tax on the reserves and undivided profits of a savings and loan association equivalent to a tax on the reserves and undivided profits of a mutual savings bank, under the express holding of the *Davenport* case, *supra*, there was no discrimination between banks and

savings and loan associations in Michigan in 1952. Professor Woodworth testified that this method of measuring the tax effect on savings and loan associations and national banks "is reasonably equitable and is also administratively practicable . . .," (R. 862a) although it had the drawback of giving tax preference to institutions with the weakest capital structure (R. 862a-863a).

In comparing the tax on mutual savings banks with the share tax on national banks, the Court in

Bank of Redemption v. Boston, supra, 125 U.S. 69,

indicating that the employable assets of both institutions would be a proper comparative, made the following statements at pp 66-67:

" . . . The tax on savings banks is based upon deposits merely. This is because deposits furnish the only capital which is invested and employed: The institutions themselves, although corporations, have no capital stock; and are managed by trustees, not selected by the depositors, but by public authority. The whole amount of the deposits, with the exception noted, are subjected to a tax of one-half of one per cent. On the other hand, the national banks pay a tax assessed upon the market value of the shares as personal property, upon a valuation and at a rate exactly equal to that of all other personal property subject to taxation in the State. But shares of the national banks, while they constitute the capital stock of the corporations, do not represent the whole amount of the capital actually employed by them. They have deposits, too, shown in the present record to amount, in Massachusetts, to \$132,042,332. The banks are not assessed for taxation on any part of these, although these de-

posits constitute a large part of the actual capital profitably employed by the banks in the conduct of their banking business. But it is not necessary to establish the exact equality in result of the two modes of taxation. * * *

In

Amoskeag Savings Bank v. Purdy, supra, (1913)
231 U.S. 373,

the Court found that there was no discrimination in favor of savings banks as compared to owners of national bank shares. In that case, the tax on national bank shares was measured by dividing the total capital surplus of all national banks involved by the number of their shares of stock, and the tax on savings banks was measured by the value of their surplus and undivided earnings. Both were taxed at the same rate. In the *Amoskeag* case, *supra*, the Court concluded, at pp 393-394:

“ * * * The language clearly prohibits discrimination against shareholders in national banks and in favor of the shareholders of competing institutions, but it does not require that the scheme of taxation shall be so arranged that the burden shall fall upon each and every shareholder alike, without distinction arising from circumstances personal to the individual.”

The combined effect of the *Davenport, Bank of Redemption, Weaver* and *Amoskeag* cases, *supra*, justifies either of two tax comparatives:

(1) Total assets of a national bank to total assets of a mutual thrift institution as inferred in the *Bank of Redemption* and *Weaver* cases, *supra*);

(2) The reserves and undivided profits of the savings and loan associations with the actual value of appellant's stock (the *Amoskeag* and *Weaver* cases, *supra*).

D. Uncontroverted evidence establishes that Michigan imposes an equivalent tax burden on national banks and savings and loan associations and that the tax burden on national banking associations does not create or foster an unequal and unfriendly competition against the business of national banks or the ownership of national bank stock.

Once it is understood that § 5219 is concerned with the practical economic impact of a state's taxation system, it then becomes important to consider the nature and amount of the total tax burden placed by a state's tax structure upon the stock of national banking associations and other moneyed capital. It is required under § 5219 that there be a determination of the practical operation and effect of the tax structure as it relates to the alleged competitive employment of other moneyed capital and the employment of capital represented by bank stock.

A mutual institution, such as a savings and loan association, has no capital equivalent to the capital of a national bank represented by a stockholder's interest and risk investment in a share of stock. [118] Savings and loan as-

[118]

This is substantiated by "Additional Facts as to Alleged Competition," *infra*, pp. 186-194; "Statement of Facts," *supra*, pp. 43-53; and by subdivision (a) of "Miscellaneous Considerations" entitled "A savings and loan shareholder is not a stockholder," *infra*, pp. 194-198.

sociations in Michigan do not have stockholders.^[119]

The nearest equivalent to a mutual savings share of a savings and loan institution is a bank deposit.^[120]

A savings and loan share account and a bank deposit have both been classified as "noncompeting moneyed capital" because they are not investments comparable to national bank stock, nor are they employed in the financial business in the same manner as the capital represented by national bank stock.

Clement National Bank v. Vermont, (1913) 231 U.S. 120

Hoening v. Huntington National Bank of Columbus,
supra, (1932) (C.C.A. 6th Circuit) 59 F. 2d 479;
certiorari denied 287 U.S. 648

People v. Goldfogle, supra, (1924) 205 N.Y.S. 870;
123 Misc. 399, affirmed by App. Div., 211 N.Y.S. 85

Because the appellant bank competitively employed **only** deposit money in the residential mortgage field in 1952 and because the sixteen savings and loan associations em-

[119]

The only possible exception is the reserve shares permitted by § 5 of Act No. 50, Michigan Public Acts of 1887 (Mich. Comp. Laws 1948, § 489.5; Mich. Stat. Ann. (Henderson) § 23,545). This permission to have reserve shares was utilized in a limited way in Michigan by one association in the Detroit area in 1952. The right of Michigan Associations to have reserve shares was eliminated in 1958 by Act No. 148, Michigan Public Acts of 1958.

[120]

This is illustrated by appellees' Exhibit 217 (R. 692a, 1316), distributed by the appellant bank for the obvious purpose of trying to distinguish between the two. Appellant, in fact, asserts they are both "other moneyed capital" (Br. 58).

played only savings share accounts in this field in 1952, practical tax equality in reference to competition with the national bank business requires a comparison of the impact of Michigan taxes on these two sources of "moneyed capital," namely, bank deposits versus savings share accounts. This, we submit, is the true dictate of § 5219.

As indicated under "Statutes Involved," *supra*, p. 4, Michigan subjected savings share accounts and bank deposits to an intangibles tax of 1.25 of 1 per cent. In addition, the Michigan savings and loan associations paid a franchise fee of $\frac{1}{4}$ of 1 mill measured by legal reserves and savings share accounts. **At this point it is clear that as a matter of law the tax structure in Michigan does not discriminate against national bank stockholders by fostering or creating an unequal and unfriendly competition with the business of national banks.** [121]

For completeness, appellees have developed the question of discrimination and the practical effect of the Michigan

[121]

Rejecting the argument that Congress impliedly intended to exempt deposits, this Court held in *Clement National Bank v. Vermont*, *supra*, (1913) 231 U.S. 120, 135:

"* * * The objection made by the bank to the State's plan must rest not upon the mere fact that the depositors in national banks are taxed upon their credits or that they are taken out of the system of local taxation, but upon the ground that the measure adopted is essentially inimical to national banks, frustrating the purpose of the national legislation or impairing their efficiency as federal agencies. *Davis v. Elmira Savings Bank*, 161 U.S. 275; 283; *McClellan v. Chipman*, 164 U.S. 347, 357. And that, in substance, is the position taken.

"To be open to such an objection, it must appear that the scheme of taxation constitutes an injurious discrimination. * * *

tax structure,^[122] which conclusively establishes that, irrespective of what approach is used, the practical effect of the Michigan tax structure is to subject like moneyed capital similarly employed to equivalent taxation.

The appellees submitted evidence pertaining to the question of tax discrimination by the uncontroverted testimony of Mr. Carlson (R. 747a, et seq.) and Professor Woodworth (R. 803a, et seq.) and by defendants' Exhibits 208 (R. 747a, 1270a), 208A (R. 735a, 1271a), 208B (R. 781a, 1272a), 210 (R. 803a, et seq.) and by defendants' Exhibits 208 (R. 747a, and 226 (R. 857a, 1292a). Appellees also carefully presented the impact of the Michigan tax structure on the institutions here involved. Appellant produced no evidence to support its contention that a variance in rates on bank stock and savings and loan shares produces an unequal and unfriendly competition against owners of national bank shares or the business of national banks.

As indicated by the exhibits and as developed by the testimony of Professor Woodworth (803a, et seq.), there are several possible methods of comparing the effect of a state tax structure on these two types of unlike insti-

[122]

Instead, appellant chooses to meet such analysis by bare repetitious assertions that a tax on the savings share accounts of a savings and loan association must be directly compared to a tax on bank shares, measured by the capital account of the bank, and that the rates on the two noncomparable species of property must be identical. Appellant ignores that the restriction of § 5219 requires such "practical equality as is reasonably attainable in view of the differing situations of such properties" [other moneyed capital]. *First National Bank of Guthrie Center v. Anderson, County Auditor, et al., supra*, (1926) 269 U.S. 341, 348. As to the share-to-share comparison, Professor Woodworth used the phrase, "Completely absurd." (R. 861a).

tutions. One method is the comparison of the tax effect on the total employable assets by each institution, which is a significant comparison when the alleged competition relates to the employment of assets in the real estate mortgage field. This comparative is in accord with the thinking of the Court in the *Bank of Redemption* case, *supra*, 125 US 60, 66-67. Under this comparative, as indicated by defendants' Exhibits 213 (R. 754a, 1279a) and 226 (R. 857a, 1292a), there was approximate tax equality in 1952 between the two institutions under consideration. The ratio of state and local taxes to total assets of the associations was .089. Appellant's ratio was .091. Similarly, the ratio of franchise and intangibles taxes to the assets of the two forms of institutions was .046 for the sixteen associations and .055 for the appellant bank. Another illustration of the asset-to-asset comparison is disclosed in defendants' Ex. 226 (R. 857a, 1292a) (prepared by Professor Woodworth), illustrating the proportion of the intangibles tax to the total assets of all national banks in Michigan and the proportion of the Michigan franchise tax to the total assets of all savings and loan associations. The ratios are .02459 for all Michigan national banks as against .02243 for the savings and loan associations.

The second method, specifically approved by the cases as to mutual savings banks (see p 104, *supra*), involves a comparison of the tax impact on the capital, surplus and undivided profits of appellant with the tax impact on all the reserves and undivided profits of the savings and loan associations in question. Taking into consideration the total taxes imposed upon each type of institution (except the unemployment and real property taxes which are imposed equally on these institutions), the resulting percent-

ages are 5.2 for savings and loan associations and 5.6 for the appellant bank.[123]

In reference to the above comparatives, it should be noted that appellees are not urging that any one of these particular comparatives constitutes the best method of equating the effect of the Michigan tax structure on these non-comparable, noncompetitive types of institutions. However, such comparative data, supported by competent testimony, indicates that the Michigan tax structure does not, by its practical operation and effect, discriminate against persons seeking to invest money in national bank stock, nor does it produce an unequal or unfriendly competition with the business of national banks (R. 856a-857a). In reference to the comparison that the appellant urges in this cause, that is, imposing an identical rate of tax on bank stock measured by capital account and on savings and loan associations' savings share accounts Professor Woodworth stated:

“ . . . in the light of the facts developed in my preceding testimony, capital, surplus and undivided profits to savings share accounts is **completely absurd**. It ignores the economic realities of the businesses of the two institutions and rests on the superficiality that [a] savings and loan share account is legally an equity rather than a deposit debt and being an equity share is comparable to shares of national bank stock. . . .”
(R. 861a) (Emphasis supplied)

Professor Woodworth found that the most practical

[123]

Computations were made from information contained in plaintiffs Ex. 3 (R. 529a, 931a-935a); defendants' Ex. 208 (R. 747a, 1279a); and 209 (R. 748a, 1273a, 1274a). On this method of comparison, see the testimony of Professor Woodworth (862a).

basis of comparison was total assets to total assets (R. 864a). In regard to this, he specifically stated:

"Total assets represent the principal basis of earning power and the opportunity to realize earnings in both institutions.

"In view of the unlike character of their businesses, organizations and operations, the amount of total assets is doubtless as equitable a common denominator for tax purposes as can be developed, in my opinion." (Emphasis supplied).

"My answer is based on the fact that we have the practical problem of taxing, the state, two financial institutions: one of them is a national bank; the other is a savings and loan association. Their operations are, to be sure, very different. They have some things in common, but basically they are quite different.

"That means that from the standpoint of justice and equity we need to pick out some basis that will more or less overlook these differences and put it in terms of perhaps, as I mentioned in my testimony, total assets of the one compared to total assets of the other. That is what each of them works with in the beginning. Those are in dollars they are equal, they are fungible. One can use them one way, the other another. They are no more different in that sense than comparing the business of a farmer with the business of a merchant in the city.

"They both are operating with so many dollars. That is a simple basis. And I would say one reason that I prefer that basis is this unlike character of their operations. Dollars are dollars, but the activities of the sav-

ings and loan associations are one thing—you might call that an apple—and the activities of the national banks might be a coconut." (866a-867a) (Emphasis added)

Even accepting the appellant's contention that the § 5219 discrimination means a direct mechanical comparison of the **rate** of tax imposed on the **value** of appellant's capital stock with the **rate** of tax imposed on the **value** of savings share accounts, there is still no discrimination in the instant case.

An acceptable method of determining the value of shares of stock for taxation purposes is by capitalization of the earnings at a predetermined rate of return per dollar of investment. If this method is applied to the valuation of appellant's stock and the savings share accounts of the sixteen alleged competing savings and loan associations, and the same rate of return per dollar of "capital" is used, there is **no rate** discrimination as to these comparable values.

In 1952, appellant's stock, valued at its capital account of approximately \$13,000,000 (R. 932a), produced approximately \$4,146,000 in net income (before federal income taxes), or a return of **31.5%** (Def. Ex. 205, R. 672a, 1268a). In 1952, the sixteen savings and loan associations had a net income (before federal income taxes and deduction of dividend payments to shareholders) of approximately \$4,466,000 on savings share account capital of approximately \$134,000,000, or a return of **3.3%** (Def. Ex. 213, R. 754a, 1279a). Thus, on **values** comparable to that of savings and loan share accounts, the effective **rate** on ap-

pellant's capital stock is $\frac{31.5\%}{5.5 \text{ mills}} = \frac{3.3\%}{x} = \text{fifty-eight-hundredths } (.58) \text{ mills, instead of five and one-half } (5.5)$

mills, which is admittedly less than the tax **rate** of .65 mills imposed on domestic savings and loan associations; under the franchise (.25 mills) and intangibles (.40 mills) taxes, and less than the **rate** of approximately sixty eight one-hundredths (.68) mills imposed by the total Michigan tax burden (other than real property taxes) on the sixteen associations (Def. Ex. 213, R. 754a, 1279a).

Thus, comparable **rates** are imposed on comparable **values**.

The difficulty of measuring the burden or effect of the Michigan tax structure and the intangibles tax on the two types of institutions serves but to emphasize their fundamental noncomparable, noncompetitive character and nature.

Clearly, the appellant has not met the burden imposed upon it to show that the tax system in question operates as a clear discrimination against the competitive employment of its capital resources. Appellant has attempted to meet this burden by assuming that discrimination is a legal conclusion and need not be proven by facts. Yet, it is clear that no legal presumption of discrimination under § 5219 can be indulged in and that appellant must sustain its burden.

San Francisco National Bank v. Dodge, 197 U.S. 70

First National Bank of Guthrie Center v. Anderson, County Auditor, et al., supra, (1926) 269 U.S. 341

4.

DISTINCT TREATMENT OF SAVINGS AND LOAN ASSOCIATIONS FOR STATE TAXATION PURPOSES AS A MATTER OF LAW DOES NOT VIOLATE SECTION 5219.

A. BECAUSE OF THEIR CHARACTER, FUNCTION, PURPOSE AND RELATIVE SIGNIFICANCE, SAVINGS AND LOAN ASSOCIATIONS IN THE INSTANT CASE ARE EXCLUDABLE FROM CONSIDERATION UNDER § 5219.

The above stated proposition is supported by three analogous lines of reasoning, as developed in the cases granting such mutual thrift societies exempt or preferred tax status:

First: They are unique institutions, created to serve a particular policy in the field of thrift savings and home ownership. The states are thus entitled to give them tax preference if they so desire, without violating § 5219, notwithstanding the fact that they may employ moneyed capital in competition with some phase of the banking business. Such a **partial exemption** does not invalidate a share tax on national banks.

Second: Their fields of operation are so narrow and well defined within this public policy that they cannot be compared with banks and thus cannot be **substantial competitors** of national banks.

Third: Individuals holding savings share accounts do not hold an equity investment; in other words, they do not employ their savings to acquire an ownership interest but merely place their savings with a mutual institution as a personal investment comparable to a time deposit in a bank.

1. The tax status in Michigan of savings and loan associations cannot invalidate the Michigan share tax on national banks under § 5219 because of the well-established rule permitting "partial exemption" of moneyed capital, even assuming a lower tax burden on such associations and that they are competitive with some phases of the business of national banks.

The cases interpreting and applying § 5219 clearly recognize that so long as Michigan taxes the major portion of all other moneyed capital in substantial equality with bank shares, the state can grant exemption or preferential treatment to the remaining portion of the total of all other moneyed capital, if based on **just reason** and not as an unfriendly or hostile discrimination against bank shares. This rule of **partial exemption** has been consistently applied to mutual savings banks and savings and loan associations, to exclude them as a matter of law from the purview of § 5219.

In applying this rule of **partial exemption** to the instant case, we have to assume that all moneyed capital, except that of savings and loan associations, was taxed in Michigan on an equivalence with national bank shares, since there is no proof to the contrary. Also, since there is no proof as to how much moneyed capital in total there was in the state in 1952, there is no showing that savings and loan savings account shares are anything but a minor part of the total moneyed capital in Michigan in 1952.

Therefore, preferential treatment of savings and loan savings share accounts, if established, would still come within the well-established rule of **partial exemption**.

(a) The General Rule of Partial Exemption under § 5219 permits Michigan to exempt or preferentially

tax some moneyed capital without thereby invalidating a tax on national bank stock, so long as the exemption or preferential taxation is based on just reason, and does not operate as an unfriendly discrimination against investments in national bank shares.

The rule of partial exemption was first considered in

People v. Commissioners, supra, 4 Wall (71 U.S.) 244. [124]

There the Court construed § 5219 to require uniformity of taxation, only of taxable property and stated, at p 256:

“ * * * it is known as sound policy that in every well-regulated and enlightened State or government, certain descriptions of property, and also certain institutions—such as churches, hospitals, academies, cemeteries and the like—are exempt from taxation; but these exemptions have never been regarded as disturbing the rates of taxation, even where the fundamental law had ordained that it should be uniform.”
(Emphasis added)

And as early stated in

Hepburn v. School Directors, supra, 23 Wall 480, 485,

wherein this court upheld exemption of all mortgages, judgments, recognizances and moneys owing upon articles of agreement for the sale of real estate:

[124]

Des Moines National Bank v. Fairweather, supra, 263 U.S. 103, affirmed this case's holding that deduction of government bonds in the hands of private bankers did not violate § 5219 even though the value of bonds could not be deducted in valuing national bank shares.

“ * * * It could not have been the intention of Congress to exempt bank shares from taxation because **some moneyed capital was exempt**. Certainly there is no presumption in favor of such an intention. To have effect it must be manifest. The affirmative of the proposition rests upon him who asserts it. * * * ” (23 Wall 480, 85)^[125] (Emphasis added)

As subsequently stated in

“ *Adams v. Nashville*, *supra*, (1877), 95 U.S. 19

at p 22, in holding that an exemption of investments in municipal bonds^[126] did not violate § 5219:

“The act of Congress [§ 5219] was not intended to curtail the State power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than **like property similarly invested**. It was not intended to cut off the power to exempt particular kinds of property, if the legislature chose to do so. * * * The discretionary power of the legislature of the States over all these subjects remains as it was before the act of Congress of June, 1864. The plain intention of that statute was to protect the corporations formed under its authority from unfriendly discrimination by the States in the

[125]

The emphasized language indicates appellant's error in asserting that this case did not apply the *partial exemption* rule to “moneyed capital.” (Br. 61, 62)

[126]

Clearly this is “moneyed capital” as defined by this Court and thus appellant's effort to distinguish this case is of no avail (Br. 61-63).

exercise of their taxing power. • • • [127] (Emphasis added)

In the wake of these early cases, the question was posed as to how far the state could go in granting exemptions, since, in theory, they could exempt all other moneyed capital and thus create a hostile and unfriendly discrimination against the banks. This result was technically justified by the power of the legislature to grant exemptions.

In *Boyer v. Boyer*, *supra*, (1885) 113 U.S. 689, this Court was faced with the rule of law established in cases such as *Hepburn v. School Directors*, *supra*, (1874) 23 Wall 480, and *Adams v. Nashville*, *supra*, (1877) 95 U.S. 19.

In the *Boyer* case, *supra*, Pennsylvania exempted from local taxation railroad securities; shares of stock held by corporations that were liable to pay certain taxes to the state; mortgages; judgments; recognizances; money due on contracts for the sale of real estate; and loans by corporations which were taxable for state purposes. The court concluded that **the exemption was so broad that the Pennsylvania statute discriminated** against capital invested in shares of national banks and, therefore, was inconsistent with § 5219. Distinguishing *Hepburn v. School Directors*, *supra*, 23 Wall 480, this Court stated at p 693:

“• • • What the court had to decide, and all that

[127]

This is further illustrated by *Lionberger v. Rowse*, (1869) 9 Wall (76 U.S.) 468, where the court upheld the tax on national bank shares even though the shares of two state banks were taxed at a much lesser rate because of special charter provisions that the state could not change. This further illustrates appellant's error, in asserting the “partial exemption rule” does not apply to Competing Moneyed Capital (Br. 61-62).

it did decide, was whether the exemption from local taxation of mortgages, judgments, recognizances, and money due upon agreements for the sale of real estate, in the hands of individuals, **was a partial exemption only**; that is, whether it was so **substantial in its nature and operations** as to affect the **integrity of the general assessment for local purposes**. * * * That case is authority for the proposition that a partial exemption by a State, for local purposes, of moneyed capital in the hands of individual citizens does not, of itself and without reference to the aggregate amount of moneyed capital not so exempted, establish the right to a similar exemption in favor of national bank shares held by persons within the same jurisdiction. * * * (Emphasis added) [128]

The *Boyer* case is similar to earlier cases such as *Evansville Bank v. Britton*, (1881) 105 U.S. 322, where a tax on national bank shares was held invalid because debts were permitted to be deducted from credits by individuals and not by the banks. Two judges dissented on the ground that this constituted only one of a number of kinds of "moneyed capital" and thus the **partial exemption** rule was applicable. Such cases clearly illustrate that this rule was not restricted to the tax rate on noncompeting moneyed capital, or property not classified as "moneyed capital" as urged by the appellant in its brief in this cause (Br 61-62).

Encouraged by success in *Boyer v. Boyer*, *supra*, 113 U.S. 689, New York City bankers engaged the successful

[128]

As indicated above in the "Statement of Facts," p. 40, the appellant has failed to establish that the alleged competing "other moneyed capital" of the savings and loan associations in its competitive area or in Michigan is a material part of the total of such capital employed in such area.

counsel in the *Boyer case* to test the New York law.^[129]
This resulted in

Mercantile National Bank v. New York, supra, (1887)
121 U.S. 138,

which is the leading case interpreting § 5219. This Court there found that the exemption or preferential treatment accorded **some** moneyed capital in New York did not violate § 5219.

The issue was stated as follows at p 145:

“The proposition which the appellant seeks to establish is that the State of New York, in seeking to tax national bank shares, has not complied with the condition contained in section 5219 * * * ‘in that, it has by its legislation expressly exempted from all taxes in the hands of the individual citizens numerous species of moneyed capital, aggregating in actual value the sum of \$1,686,000,000, whilst it has by its laws subjected national bank shares in the hands of individual holders thereof (aggregating a par value of \$83,000,000), and state bank shares (having a like value of \$22,815,700), to taxation upon their full actual value, less only a proportionate amount of the real estate owned by the bank.’ This exemption, it is claimed, is of a **‘very material part relatively’ of the whole, and renders the taxation of national bank shares void.**”
(Emphasis added)

The court found that no tax was imposed on savings banks

[129]

Woosley; “State Taxation of Banks” (University of North Carolina Press, 1935), p. 30.

and municipal bonds. By reliance on *Hepburn v. School Directors, supra*, (1874) 23 Wall (90 U.S.) 480, it determined that § 5219 was not violated by state exemption of the same for public policy reasons. As stated at p 161:

“ . . . The only limitation, upon deliberate reflection, we now think it necessary to add, is that these exemptions should be founded upon **just reason**, and not operate as an **unfriendly discrimination** against investments in national bank shares. However large, therefore, may be the amount of moneyed capital in the hands of individuals, in the shape of deposits in savings banks as now organized, **which the policy of the state exempts from taxation for its own purposes, that exemption cannot affect the rule for the taxation of shares in national banks**, provided they are taxed at a rate not greater than other moneyed capital in the hands of individual citizens—**otherwise** subject to taxation.” (*Mercantile Bank v. New York, supra*, 121 U.S. 138, at p 161) (Emphasis added)

To the same effect:

National Bank of Wellington v. Chapman, supra,
173 U.S. 205, 214

Aberdeen Bank v. Chehalis County, supra, (1897)
166 U.S. 440, 454, 460

Bell's Gap Railroad Co. v. Pennsylvania, supra, 134
U.S. 232, 237 [a 14th Amendment case]

This established rule of partial exemption, founded upon state and federal^[130] public policy considerations, has not

^[130]

See “Statutes Involved”, pp. 9-17, for an expression of the public policy to be served by state and federal savings and loan associations.

been altered or changed by any decision interpreting § 5219.

- (b) **The General Rule of Partial Exemption has been consistently held to exclude Mutual Thrift Institutions as a matter of law from the scope of § 5219.**

This established rule of **partial exemption** has been consistently applied to permit tax exemption or preferential tax treatment of savings and loan associations and mutual savings banks.

Starting with *Mercantile Bank v. New-York, supra*, 121 U.S. 138, this court held that the exemption of mutual savings banks did not invalidate a tax on national bank shares.

In reference to such institutions, the court stated, in part, at p 160:

“ * * * It cannot be denied that these deposits constitute moneyed capital in the hands of individuals within the terms of any definition which can be given to that phrase; but we are equally clear that they are not within the meaning of the Act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must thereby also be exempted from taxation. * * * ‘it could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt’—*Hepburn vs. School Directors*, 23 Wall. 480—and that ‘the act of Congress was not intended to curtail the state power on the subject of taxation. It simply required that capital invested in national banks should not be taxed at a greater rate than **like property similarly invested**. It was not intended to cut off the power to exempt particular kinds of property, if the

legislature, chose to do so.' *Adams vs. Nashville*, 95 U.S. 19. * * * (Emphasis added)

This reasoning was followed in upholding the exemption of savings banks in

Davenport Bank v. Davenport, *supra*, 123 U.S. 83. [131]

This Court stated, on p 86, in speaking of the *Mercantile* case, *supra*, ruling as to savings banks:

"The whole subject has been recently considered by this court in the case of *Mercantile Bank v. New York*, 121 U.S. 138. In that opinion it was held that, while the deposits in the savings banks of New York constituted moneyed capital in the hands of individuals, **yet it was clear that they were not within the meaning of the act of Congress in such a sense as to require that because they were exempted from taxation the shares of stock in national banks must also be exempted.** The reason given for this is that the institutions generally established under that name are intended for the deposits of the small savings and accumulations of the industrious and thrifty; that to promote their growth and progress is the obvious interest and manifest policy of the state; and, as was said in *Hepburn*

[131]

In reference to this case the trial court below stated:

"The Court was to make clear which of these two reasons (competition or public policy rule of partial exemption, both of which were considered in the *Mercantile* case, *supra*) it considered the controlling one in later cases which came before it. * * * The opinion of the Court is of importance because the Court which had decided the *Mercantile Bank* case, took occasion to state the reason for its decision in that case; * * *." (81a) (Parenthetical portion added.)

vs. *School Directors*, 23 Wall. 480, it could not have been the intention of Congress to exempt bank shares from taxation because some moneyed capital was exempt." (Emphasis added)

The rule of these cases was followed in

Bank of Redemption v. Boston, *supra*, (1888) 125 US 60,

where it was urged that the question should be reconsidered in light of the marked differences between mutual savings banks in New York (*Mercantile Bank* case) and in Massachusetts (*Bank of Redemption* case). As to this contention, the court stated at pp 67-68:

" . . . The question of the exemption from taxation of deposits in savings banks, as affecting the rule for the State taxation of national bank shares, was very deliberately considered by this court in the case of *Mercantile Bank v. New York*, 121 U.S. 138, 160; and the conclusion reached in that case was reaffirmed in the case of *Davenport Bank v. Davenport Board of Equalization*, 123 U.S. 83. . . .

"It is impossible, in our judgment, to distinguish the present from the case of the New York savings banks, or of those of Iowa considered in the case of the *Davenport Bank*. . . .

" . . . They are substantially institutions, . . . organized for the purpose of investing the savings of small depositors, and not as banking institutions in the commercial sense of that phrase. We adhere to the rule as declared in the cases heretofore decided,

• which forecloses further discussion * * * [132] (Emphasis added)

[132]

This case completely refutes the appellant's argument, (Br. 27c, 78-79) that *factual competition* was absent in the partial exemption cases and that, therefore, such cases are inapplicable where the capital of savings and loan associations is found to be in *factual competition* with the business of national banks. Appellant's error is illustrated by the following references to the record [*Bank of Redemption, supra*, (1888) 125 U.S. 69; Records and Briefs, U.S. Sup. Ct., Vol. 472, Oct. Term/1887]:

1. The stipulation of facts reads in part: "Said savings bank in the year 1885, and in the years before that, received deposits and loaned a part thereof: (1) on promissory notes secured by collateral securities such as they were by law allowed to invest their deposits in; (2) on notes of cities and towns; (3) on promissory notes with two sureties, called 'loans on personal security', in most cases with collateral other than such as mentioned before (except in the case of notes of corporations which were taken without collateral and to a large amount), * * *." (P. 25-Record)
2. The stipulation further indicates that the notes of the savings banks were not materially different, in terms and conditions, from the bank notes and for that reason it was further stipulated that: "In the ordinary course of the business of borrowing and loaning money in Massachusetts persons engaged in obtaining loans on such notes or negotiating them for themselves or others during said years applied for and procured them indiscriminately at said savings banks and said national banks wherever they could obtain them on the best terms; and said savings banks usually made such loans on longer terms and lower rates * * *." (P. 26-Record)
3. Of approximately \$66,000,000 of total assets of the savings banks in Boston in 1882, \$25,000,000 were invested in the type of notes described above. (P. 71-Record)
4. Bank assets in Boston in 1882 amounted to approximately \$111,000,000 and savings bank assets amounted to approximately \$66,000,000, which was in excess of the value of all bank stock in Boston. (P. 71-Record)
5. Assets of savings banks in Massachusetts, amounting to ap

Appellant attempts to persuade us (Br. 64) that the *Bank of Redemption* decision was overruled by *First National Bank of Hartford v. Hartford, supra*, (1927) 273 U.S. 548. There is utterly nothing in the *Hartford* decision which expressly or impliedly undertakes a repudiation of *Bank of Redemption*. *Hartford* was addressed to a situation where sweeping preferences were granted to large areas of competing money capital. [133]

In *Aberdeen Bank v. Chehalis County, supra*, (1897) 166 U.S. 440, this Court again affirmed the holding of the three earlier cases of *Mercantile Bank v. New York, supra*, 121 US 138; *Bank of Davenport v. Davenport, supra*, 123 US 83; and *Bank of Redemption v. Boston, supra*, 125 US 60. The Court considered at length the *Mercantile* decision (166 U.S. 440, 454-461). It analyzed the *Mercantile* holding to be (at p 460):

“ . . . As to savings banks it was held that, though it could not be denied that their deposits constituted moneyed capital in the hands of individuals, yet it

proximately \$115,000,000, included government bonds, railroad bonds; bank deposits, cash, real estate, loans on real estate mortgages, loans on public funds and bank stock, loans to governmental units, and loans of approximately \$62,000,000 which were on personal security. (P. 43-Record)

It is evident that the record in the *Bank of Redemption* case, *supra*, showed *factual* competition between the savings banks in Massachusetts and in Boston and the national banks in Massachusetts and in Boston. The record in this case clearly establishes then that the activities of the mutual savings banks in the early partial exemption cases substantially overlapped the area of national bank activities of that day.

[133]

The Supreme Court of Michigan agreed with this statement (R. 1357).

was clear that they were not within the meaning of the act of Congress in such a sense as to require that, if they are exempted from taxation, shares of stock in national banks must also be exempted; that it was part of the policy of the State to encourage the accumulation of small savings belonging to the industrious and thrifty, and it was within the reasonable exercise of the power of the State to exempt particular kinds of property, * * *."

This court then applied § 5219 to general corporations, insurance companies and mutual savings banks as follows (166 U.S. 440, 460-461):

"The conclusions to be deduced from these decisions are that money invested in corporations or in individual enterprises that carry on the business of railroads, of manufacturing enterprises, mining investments and investments in mortgages, does not come into competition with the business of national banks, and is not therefore within the meaning of the act of Congress; that such stocks as those in insurance companies may be legitimately taxed on income instead of on value, because such companies are not competitors for business with national banks, and that exemptions, however large, of deposits in savings banks, or of moneys belonging to charitable institutions, if exempted for reasons of public policy and not as an unfriendly discrimination against investments in national bank shares, should not be regarded as forbidden by section 5219 of the Revised Statutes of the United States."

It is to be noted from this extract that **this Court specifically considered the question of competition with regard to general business enterprises and insurance companies, but deliberately separated its statement regarding public policy**

exemption of mutual savings banks from any element of competition.[134]

These earlier cases prompted this Court to say in *National Bank of Wellington v. Chapman*, *supra*, 173 U.S. 205, at p 214:

"The result seems to be that the term 'moneyed capital,' as used in the Federal statute, does not include capital which does not come into competition with the business of national banks, and that exemptions from taxation, however large, such as **deposits in savings banks** or moneys belonging to charitable institutions, **which are exempted for reasons of public policy** and not as an unfriendly discrimination as against investments in national bank shares, **cannot be regarded as forbidden by the Federal statute.**" (Emphasis added)

Savings and loan associations are treated the same as mutual savings banks in reference to the application of the partial exemption rule. In fact, the testimony in this cause indicates they could not have validly been treated

[134]

Woosley, in *State Taxation of Banks*, Chapel Hill, The University of North Carolina Press (1935), states, on pp. 26-27:

"* * * In *Aberdeen v. Chehalis County*, they [savings banks] were recognized as belonging to the *genus* of competing moneyed capital, but the fact that the exemption from taxation was for reasons of public policy, and not as an unfriendly discrimination against national banks, prevented such exemption from invalidating the taxes on national bank shares." (bracketed material added)

"* * * For reasons of public policy, as already indicated, bonds issued under state authority and deposits in savings banks are excluded from the list of other moneyed capital.* * *

otherwise because of basic similarities and the absence of any substantial dissimilarities.^[135]

That savings and loan associations were embraced within the Supreme Court's consistent rulings as to partial exemption of mutual savings banks, was judicially recognized for the first time in

Mercantile National Bank v. Hubbard, supra, (1899)
98 F. 463,^[136]

at p 471:

“ It seems to me that building associations are certainly not to be differentiated in their purpose or object, or practical effect, from savings banks,”

This has been well established as settled law by the following decisions:

Hoenig v. Huntington National Bank, supra, (1932)

[135]

In this particular, see *Commissioner of Corporations & Taxation v. Flaherty*, (1940) 28 N.E. 2d 433, 306 Mass. 461, certiorari denied 61 S. Ct. 450, 312 U.S. 680, where it was held that a state tax imposed on income received by shareholders in a federal savings and loan association incorporated under the “Home Owners’ Loan Act of 1933” but not on income of cooperative banks which are incorporated by the state and conduct a substantially similar business, is invalid as discriminatory against shareholders in the federal association.

Cf. *United States v. Cambridge Loan and Building Co.*, 278 U.S. 55.
[136]

Affirmed *sub nomine Lander v. Mercantile National Bank, supra*, 186 U.S. 458; cf. *Commissioner v. Flaherty, supra*, (1940) 28 N.E. 2d 433, 306 Mass. 461, certiorari denied 312 U.S. 680; *First National Bank of Shreveport v. Louisiana Tax Commissioner, supra*, (1933) 289 U.S. 60. *First Federal Savings & Loan Assn. v. Cannelly*, 115 A. 2d 455, 142 Conn. 483.

(CCA 6th Circuit) 59 F. 2d 479, cert. denied 287 U.S. 648

First National Bank of Shreveport v. Louisiana Tax Commission, supra, (1933) 289 U.S. 60

Mercantile National Bank v. Hubbard, supra, (1899) 98 F. 465

People v. Goldfogle, supra, (1924) 205 N.Y.S. 870, 123 Misc. 399, aff'd by App. Div., 211 N.Y.S. 85

First National Bank of Glendive v. Dawson County, (1923) 66 Mont. 324; 213 P. 1097

Merchants' National Bank of Glendive v. Dawson County, supra, (1933) 93 Mont. 310; 19 P. 2d 892

Consolidated National Bank v. Pima County, supra, 5 Ariz. 144, 48 P. 291.

In each of the cases in this last-referred to group, the courts, without exception, have excluded savings and loan associations from the purview of § 5219. The cases cover an expanse of time of approximately half a century. Each case involved savings and loan associations which obviously could not be similar in their fiscal importance or in the detail and scope of their operations because formed and regulated by the laws and practices of several states at different periods of time. Thus, **these cases are speaking in reference to basic public policy considerations involved in the very creation and existence of savings and loan associations** rather than to the possible ebb and flow of their fiscal significance or to the detail of their organization and activity. [137]

[137]

The appellant rested its argument in the Court below on its contention that the partial exemption rule is related solely to noncompeting capital. Appellant then argued that the factual differences

It is believed this is sharply brought into focus in

Mercantile National Bank v. Hubbard, supra, (1899)
98 F. 465,

where the court found no difference between the mutual savings banks considered in

Mercantile National Bank v. New York, supra, (1887).
121 U.S. 138,

and the savings and loan associations of Ohio for § 5219 purposes. These remarks of Judge Taft in his opinion (p. 11) are peculiarly directed to this question:

of competition between the mutual savings bank and savings and loan associations involved in the *partial exemption* cases and the Michigan savings and loan associations justify a different result. As indicated by the facts of competition in the *Bank of Redemption* case, *supra*, and in the *Hoenig* case, *supra*, no different result is justified even though the question of factual competition were controlling. The records in the *Hoenig* (see *infra* p. 112) and *Bank of Redemption* (see *supra* p. 127) cases, as well as the other *partial exemption* cases, clearly indicate that the factual question of competition relied upon by appellant in this cause is immaterial.

Before this Court, appellant attempts to distinguish the *partial exemption* cases by asserting that the savings and loan associations in Michigan are no longer the type of institution to which the *partial exemption* rule is to be applied, apparently on the contention that there no longer exists any *just reason* for application of the same. This argument is groundless. The trial court stated:

"Plaintiff further alleges that there has been such a substantial change in the purpose and character of building and loan associations since the savings bank cases and the Hubbard case that those authorities are no longer applicable.

"This same contention was answered by the Circuit Court of Appeals in the Hoenig case. It is answered by the testimony of Professor Woodworth in this case and Congress by its definition of the purpose of the 1933 act effectively settles the question of the character and purpose of these institutions." (R. 104a-105a)

“ * * * There is proof of the capital in savings banks, and also of the capital invested in building and loan associations; but, **under the decision of *Mercantile Bank v. City of New York*, 121 U.S. 138, 7 Sup. Ct. 836, 30 L. Ed. 895, capital invested in savings banks cannot be regarded as moneyed capital, within the meaning of section 5219, exemption of which from taxation can constitute a discrimination within the inhibition of that section. It seems to me that building associations are certainly not to be differentiated in their purpose or object, or practical effect, from savings banks, and that the capital invested in them, though subject to a somewhat different rule of taxation, cannot be regarded as moneyed capital in competition with the moneyed capital in national banks, any more than is capital invested in savings banks. The chief object of building associations is to encourage the building of small houses by poor people, and the saving from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house. The mere fact that every shareholder in a building association need not be a borrower cannot, I think, change the effect of the general purpose of the building association law. * * *** (Emphasis added)

Approximately twenty-four years after the *Hubbard* case, *supra*, the Supreme Court of Montana, in

First National Bank of Glendive v. Dawson County,
supra, (1923), 66 Mont. 321, 213 P. 1097,

concluded that a tax on bank shares was not violated by tax exemption or preferential tax treatment of savings and loan associations because:

“(1) Under the law the Glendive building and loan association was not and is **not permitted to do business in competition with the plaintiff bank within the purview of section 5219**; (2) the state of Montana, in levying taxes, may, if it sees fit, **favor building and loan associations as a matter of public policy**, and its action in so doing will not be deemed unfriendly discrimination against national banks.” (Emphasis added)

People v. Goldfogle, supra, (1924) 205 N.Y.S. 870,
123 Misc. 399, aff'd by App. Div., 211 N.Y.S. 85

held that these associations were not within the purview of § 5219 and the states were entitled to treat them differently for taxation purposes than they do national bank shares.

At a later date, based upon the contentions that savings and loan associations had changed their methods of operation, had become financially more important, and were engaging in more phases of the banking business than the old associations, national banks litigated:

Hoenig v. Huntington National Bank, supra, (1932)
(C.C.A. 6th Circuit) 59 F. 2d 479

Merchants Nat. Bank of Glendive v. Dawson County, supra, (1933) 93 Mont. 310, 19 P. 2d 892.

First National Bank of Shreveport v. Louisiana Tax Commission, supra, (1933) 289 U.S. 60.

As in the past, each court affirmed the proposition that savings and loan institutions, as a matter of law, were not within the purview of § 5219. They ruled out the claims

of bank counsel that the foregoing alleged change in these institutions changed prior law.^[138]

In reply to the argument that such associations had increased their activity since the *Hubbard* decision, *supra*, and were now in competition with national banks, the court held at p 482 of the *Hoenig* case, *supra*, as follows:

“It is insisted, however, that the present day building association is a very different type of institution from the ‘small, neighborhood, mutual associations of Judge Taft’s time,’ and emphasis is laid upon the construction of offices in similitude to those of banks, the competition for deposits, the payment of deposits on demand, and the making of loans upon collateral security.^[139] We do not think that the general nature of the business of building associations has so far changed as to make the law established by the above-cited cases inapplicable. Compare *United States v. Cambridge Loan & Bldg. Co.* 278 U.S. 55, 49 S. Ct. 39, 73 L. Ed. 180. The chief purpose of these institutions is still ‘to encourage the building of small houses by poor people, and the saving from their earnings, week by week, of an amount sufficient to pay the mortgage debts incurred in the purchase of the land and the construction of the house.’ *Mercantile National Bank v. Hubbard*, *supra*, (C.C.), 99 F. 465, 471. * * * (Emphasis added)

In contrasting these associations with national banks, the court in the *Hoenig* case, *supra*, also stated, at p 482, that savings and loan associations were created in

[138]

As did the Trial Court in the instant case (footnote 137, *supra*, R. 104a-105a).

[139]

These are areas forbidden to the Michigan and federal associations.

“ . . . furtherance of a wholesome public policy to promote building, especially the building of homes, and to develop the habit of thrift.” (Emphasis added)

In

Merchants' National Bank of Glendive v. Dawson County, supra, (1933) 93 Mont. 310, 19 P. 2d 892,

the Montana Supreme Court again held that savings and loan associations were without the purview of § 5219 for two reasons: First, they were not competitive institutions; and second, as stated at 19 P. 2d 896:

“ . . . “The state may, if it sees fit, favor such associations in levying taxes, as a matter of public policy, without such action being regarded as unfriendly discrimination against national banks.” . . . ”

Counsel for the bank in

First National Bank of Shreveport v. Louisiana Tax Commission, supra, (1933) 289 U.S. 60,

again contended that there was no proper basis in law or fact to exempt or preferentially treat savings and loan associations. This Court, in answer to such contention, again affirmed the well-settled rule that without violating § 5219 savings and loan associations could be treated differently than national banks for state taxation purposes based upon the fundamental differences between the two types of institutions.

In conclusion, it should be emphasized that each case involving the status of mutual savings banks and savings and loan associations was litigated with

Mercantile National Bank v. New York, supra, 121
US 138,

as direct and uncontroverted precedent. Counsel for the banks in every case subsequent to the *Mercantile* case, *supra*, had to factually distinguish the savings and loan associations or mutual savings banks of their respective jurisdiction from the same type of institutions involved in the prior decisions. In each case, the courts found all alleged differences to be immaterial.

It is thus conclusively established that a state's tax on bank shares cannot be invalidated because savings and loan associations are tax exempt or are given preferential tax treatment.[140]

[140]

The *Boyer* and *Hartford* cases, *supra*, demonstrate its limitations, which simply are: (1) it must be a *partial* exemption of "other moneyed capital" and not a total exemption; (2) it must not create a hostile or unfriendly discrimination against national bank shares; and (3) it must be based on just reason. These limitations preserve the integrity of a state's power to carry out its public policy in tax matters and yet give the national banks and/or their shareholders the protection intended by § 5219, i.e., protection from unfriendly, hostile or discriminatory taxation by the state.

Appellant fails to realize that exemption or preferential tax treatment justified by public policy considerations (which is the basis of the restriction on a state's power to tax national bank shares in the first instance) does not result in discrimination. Is a home owner discriminated against when the local church is exempt from property tax but his home is not? It seems that he is not but, rather, that the church is favored because of the public policy of encouraging religion, which in turn should inure to the benefit of all.

The partial exemption rule is noted thusly by Woosley on p. 27:

"One other type of innocuous inequality should be noted. In *Hepburn v. The School Directors* the court held that a *partial* exemption of other moneyed capital did not constitute a discrimination against national bank shares. In that case all mortgages,

2. There is no evidence in this record to show that the savings and loan associations in Michigan in 1952 were any different from the savings and loan associations considered in the above decisions which place such associations without the scope of section 5219.

The record amply supports this statement, and it is not refuted by the unsupported contracontentions of the appellant.

There is positive and unrefuted proof that the character, purpose and function of savings and loan associations, both in Michigan and elsewhere, have not changed. The fact that these **basic objectives** have not been altered is attested to by reference to the legislation that created them.[141]

State building and loan associations are incorporated under Act 50, PA 1887, as amended.[142] Section 1 states that the purpose of such associations is

judgments, recognizances, and moneys owing upon articles of agreement for the sale of real estate were exempt from the taxation. In spite of these facts the court held that there might be some moneyed capital in the community which was taxed, and hence no discrimination existed against national banks."

The fact that savings banks were not subject to the restraint of § 5219 by the judicial decisions herein referred to was specifically noted and approved by the House manager in the proceedings concerning the 1923 amendments to paragraph (b) of § 5219 (64 Cong. Record 4802 [1923]).

[141]

In this connection, it is interesting to note that though appellant spent considerable effort on proof relating to the by-laws and organizational aspects of the Michigan associations, it has found *nothing* of significance to mention in its briefs, either here or in the Courts below.

[142]

C.L. 48, § 489.1, et seq.; Stat. Ann. § 23541, et seq.

“ . . . building and improving homesteads, . . . accumulating money to be loaned to its members . . . or assisting its members to accumulate and invest their savings, . . . ”

Section 37 provides, in part, that

“ No building and loan association shall, directly or indirectly, do a banking business, . . . ”

Federal building and loan associations were created for similar purposes under the “Home Owners’ Loan Act of 1933.” 12 U.S.C. § 1464(a) recites that such associations are chartered

“ . . . to provide local mutual thrift institutions and . . . the financing of homes. . . ”

Title 12, USCA, § 1464(b), permits federal associations to raise capital only in the form of “payments on such shares as are authorized in their respective charters.” Such associations are prohibited from accepting deposits or issuing certificates of indebtedness, except for money borrowed from the Federal Home Loan Bank Board.

Decisions referred to above in regard to the status of mutual savings banks and savings and loan associations under § 5219, from

Mercantile National Bank v. New York, supra, 121
US 138,

through

Hoenig v. Huntington National Bank, supra, (1932)
(C.C.A. 6th Circuit) 59 F. 2d 489, cert. denied 287
U.S. 648,

and

*First National Bank of Shreveport v. Louisiana Tax
Commission, supra*, (1933) 289 U.S. 60,

make no detailed factual reference to what in fact such mutual thrift associations did. These cases referred to the chief object or purpose or fundamental character of these institutions. The courts concluded that the basic character, purpose and function of these associations differed markedly from the character of national banking associations and that, therefore, the preferential treatment or exemption of the savings shares of these associations did not violate § 5219. Certainly, there is nothing in the record in this cause about the nature of the organization and function or purpose of either the Michigan savings and loan associations or the federal savings and loan associations to indicate that they have departed from the purpose of their creation, i.e., to provide a means for people of all classes, including poor people, to accumulate savings or to obtain money for home financing purposes, or both. To the contrary, the record in this cause clearly shows that such was the purpose, function, and practice of the federal and state associations in Michigan in 1952. In fact, appellant's complaint is directed against the activities of savings and loan associations in carrying out the public policy of thrift savings and home financing. The alleged competition existing between the two institutions is the accumulation of thrift savings (bank deposits, as compared to savings share accounts) and

the loaning of these moneys for home ownership purposes.[143]

Counsel for appellant concede that the *Hoenig* case, *supra*, represents a proper interpretation of § 5219 (Br. 78). They assert that it was decided on "lack of factual competition (Br. 78).

The following table is a comparison of some of the statistical information set forth in the *Hoenig* record, with the same statistical information for Michigan in 1952.

The Court's attention is directed to the following facts illustrated by this table:

1. The assets of the savings and loan associations in Ohio in 1926 were approximately equal to the total assets of all national banks in Ohio, while in 1952 the assets of all savings and loan associations in Michigan constituted less than 15 per cent of the total assets of national banks in Michigan.
2. The assets of savings and loan associations in Ohio in 1926 were approximately double the total assets of such associations in Michigan in 1952.

Facts 1 and 2 would indicate that savings and loan associations in Ohio in 1926 were more predominant in the

[143]

See also Woosley, *State Taxation of Banks, supra*, at pp. 40-41, wherein he analyzes the soundness of the *Shreveport* decision, *supra*. Apropos is this statement from Woosley, at p. 41:

"* * * Who can deny that deposit banking and specialized financial institutions, while unquestionably competitive in certain areas of their operation, are, however, substantially different in their financial functions."

"HOENIG" FACTS* (1926)

*Numbers in brackets refer to pages of the Hoening record.

Assets of All National Banks in Ohio (1)	Assets of All S & L Ass'ns in Ohio (2)	Ratio of (2) to (1)
\$947,979,000 [Report of the controller of the Currency, 1926, p. 4-4]	0 \$928,381,733 [78,316]	.98
Total Real Estate Loans of Banks at Beginning of Year and Percent of Assets	Total Real Estate Loans of Ass'ns at Beginning of Year and Percent of Assets	Ratio of 91% to 5.14%
\$48,742,000 [37, 65] = 5.14%	\$844,078,174.55 [38, 81] = 91%	17.7
Deposits of All National Banks in Ohio	Deposits plus "Running Stock" of All Ass'ns in Ohio	Ratio of 79.6% to 71.3%
\$676,125,000 [64, 343] = 71.3% of total assets	\$738,548,784 [316] = 79.6% of total assets	1.12

Average Investment**

\$497

Average Outstanding Loan

\$2806

**Ohio associations had both deposits and savings share account holders. Some persons undoubtedly had both types of accounts. The record does not disclose the average per capita holding in both accounts.

The average investment of \$497 includes reserves and undivided profits of \$22 per share.

FACTS IN THIS CAUSE (1952)

Assets of All National Banks in Mich. (3)	Assets of All S & L Ass'ns in Mich. (4)	Ratio of (4) to (3)
\$3,728,340,000 [Exh. 226]	\$534,314,000 [Exh. 6]	.143
Total Real Estate Loans of Nat'l Banks in the U. S. in Percent of Total Assets	Total Real Estate Loans of Ass'ns in the U. S. in Percent of Total Assets	Ratio of 81.2% (80.4%) to 7.6%
7.6% [Exh. 220, 224A]	81.2% (All S & L Ass'ns in Michigan = 80.4%) [Exh. 209, 224A]	10.7 (10.6)
Deposits of All Nat'l Banks in the U. S.	Share Deposits of All Ass'ns in the U. S.	Ratio of 84.8% (87.0%) to 91.8%
91.8% of total assets [Exh. 224] (Mich. Nat'l Bank is also 91.8%) 92.3	84.8% of total assets 87.0% in Michigan [Exh. 221, 222A]	.92 (.94)

Average Shareholding

\$1449 (8-15-52)

Average Outstanding Loan

\$4872 (8-15-52)

financial business of Ohio than were the savings and loan associations in Michigan in 1952.

3. The average investment in the Ohio associations in the *Hoenig* case, *supra*, was about \$500, compared to approximately \$1500 in Michigan in 1952.

If any realistic consideration is given to inflation, which was the subject of testimony of Professor Woodworth (R. 902a) and to the general growth of our economy, the average of \$497 in 1926 could not be said to represent an investment by a different class of people from Michigan share account holders in 1952.

4. In the *Hoenig* case, *supra*, the average outstanding loan was \$2,806 in 1926, while the average outstanding loan of Michigan associations in 1952 was \$4,872.

Taking into consideration the same factor of inflation as used in comparing the average shareholder account, it is obvious that the Ohio associations were not loaning to any poorer, or lower class of people, than were the Michigan associations.

The Ohio savings and loan associations could accept deposits (which were closely akin to deposits in mutual savings banks). They could float their own bonds to obtain capital funds to invest and they not only dealt extensively in the mortgage loan field in the same manner as did the national banking associations, but they also were able to make personal loans and to deal extensively in the securities field.

The above referred to facts, plus numerous other facts set forth in the *Hoenig* record, *supra*, clearly establish that the savings and loan associations in Ohio were not

only much more formidable economic units than the savings and loan associations in Michigan in 1952, but that those associations were able to carry on activities and operations more closely analogous to the business of banking than were the federal or Michigan associations in 1952. (Extracts from the *Hoenig* record that conclusively demonstrate the above statement are set forth as an addendum B to this brief.)^[144]

The above comments and conclusions in regard to the nature, character and purpose of the savings and loan associations in the *Hoenig* case, *supra*, and the existence of *factual* competition is in accord with the conclusion of the Special Master Commissioner, the District Court and the dissenting opinion of the Circuit Court of Appeals in the *Hoenig* case.

[144]

In further reference to the *Hoenig* record, the Court's attention is particularly directed to the Report of the Special Master Commissioner, filed July 18, 1929, set forth on pp. 28-54 of the *Hoenig* record, *supra*, and more particularly as follows: Statistical information on p. 28 through top of p. 33, showing the financial picture of national banks in Columbus, other large cities in Ohio, and the state of Ohio, as well as the corresponding figures of building and loan associations; pp. 34 and 35, paragraphs VIII and IX, setting forth the kind of activities, including real estate mortgage activity, carried on by building and loan associations in Columbus, Ohio (location of the plaintiff-bank in the *Hoenig* case, *supra*); p. 35 through top of p. 38, paragraph X, setting forth information concerning national bank activity of the plaintiff-bank; other banks in the city of Columbus, Ohio, and in the large cities of Ohio; and p. 38 to the top of p. 39, paragraph XII, referring to the mortgage business of the savings and loan associations; balance of p. 39 and p. 40, paragraph XII, where the Special Master Commissioner found only two or three small associations followed the so-called "old mutual plan" and the remainder of the associations required only a nominal, initial stock subscription as a condition for obtaining a loan.

The Special Master Commissioner found:

“Upon the evidence in this case, the Master is required to find, and does find, that a relatively large and material part of the monied capital of building and loan associations in the City of Columbus is employed in the making of loans of a kind normal to national banks and in substantial competition with the business of the plaintiff banks and other national banks in the City of Columbus in the making of mortgage loans by such national banks and the employment of their capital for this purpose. * * *” [*Hoenig Record*, p 44]

The District Judge, in his “Special Findings of Fact and Separate Conclusions of Law” [*Hoenig Record*, pp 81, 82], referred at length to the varied and substantial activity of the savings and loan associations in Ohio, which constituted the same activity carried on by national banks in Ohio and in Columbus, and concluded, after the analysis of the facts:

“As a conclusion from the above facts, it is found that while not all of the business done by building and loan companies comes into competition with the plaintiffs and other national banks in the City of Columbus, a relatively large and material part of the moneyed capital of building and loan associations in the City of Columbus is employed in the making of loans of a kind normal to national banks and in substantial competition with the business of the plaintiff banks and other national banks in the City of Columbus in the making of mortgage loans by such national banks and the employment of their capital for said purpose.” (p 81, 82—record)

The dissenting opinion in the Circuit Court of Appeals arrived at the same conclusion. Because of such substantial competition, the lower court held that § 5219 was violated by the Ohio tax on national bank shares.

It is thus apparent that the opinions in the *Hoenig* case amply demonstrate that the Circuit Court of Appeals, in reversing the lower court, was well aware of the substantial *factual* competition found to exist by the Master and by the District Court. The existence of such competition, as a matter of fact, was the basis of the dissenting opinion, as well as of the lower court's opinion. In spite of the existence of such *factual* competition and without reversing the finding of factual competition the majority in the *Hoenig* case found no substantial competition within § 5219 because of the marked differences between savings and loan institutions and national banks and also because they found that in any event the *partial* exemption rule controlled.

It is sufficient to state here, in conclusion, that the appellant, by the format of its own argument as tested against the *Hoenig* record, has made no case. Certainly, there is nothing in the *Hoenig* record to support its argument that the Michigan savings and loan associations are serving different people, or different interests, from the Ohio building and loan associations referred to in the *Hoenig* record. If any exact comparison of these two classes of associations is to be made, it is quite evident that the Michigan and federal associations in Michigan in 1952 were truer in character, function and purpose to the traditional mutual thrift societies than the building and loan associations in Ohio in 1926.

3. The purpose and established public policy treatment of savings and loan associations cannot be properly challenged in this proceeding.

Federal savings and loan associations, since their creation by Congress in 1933, have uniformly been construed to exist in the public interest as quasi-public institutions, as contrasted to mere private business organizations. Congress has not only appropriated large sums of money for their formation^[145] and for the federal savings and loan insurance corporation^[146] (of which they were automatically made members along with cooperative banks, homestead associations and other state associations), but it specifically stated the purpose of their creation. This purpose is "to provide local mutual thrift institutions"^[147] and not to create institutions to engage in the general banking business.^[148] Or, as set forth in § 1464(a) of USCA, it is to provide local, mutual thrift institutions in which people may invest their funds in order to provide for the financing of homes. It is in furtherance of a governmental and public purpose to meet the national problem of preserving home ownership and promoting a sound system of home mortgage financing.^[149] It is actually the further-

[145]

12 U.S.C. § 1464(g); 12 U.S.C. § 1465.

[146]

12 U.S.C. § 1725.

[147]

12 U.S.C. § 1464(a).

[148]

U.S. ex rel. State of Wisconsin v. First Federal Savings and Loan Assn. (D.C. Wis. 1957), 151 F Supp 690; cf. *Springfield Institution for Saving v. Worcester Federal Savings and Loan Assn.*, (1952) 320 Mass 184, 107 NE 2d 315, and *Fahey v. Mallonco*, 332 US 245.

[149]

This was upheld under the general welfare clause in *First National*

ance of this policy which has permitted the appellant to loan on F.H.A. and V.A. mortgages and to trade in them in 1952.

The whole savings and loan insurance system applicable to both state and federal associations was inaugurated under this theory.

Federal Savings and Loan Ins. Corp. v. Edison Savings and Loan, 177 Fed 2d 638.

The public policy position of both the state and federal savings and loan associations has been so well established that it has become "Hornbook Law."

12 C.J.S., "Building and Loan Associations," § 2, discusses the origin and growth, and § 3 discusses the nature, status and distinguishing features of such associations. In the aforesaid § 2, at p 396, it is stated in part:

"Where these institutions have been properly regulated and conducted, they have been of tremendous value in encouraging thrift and the ownership of homes among people of moderate means. . . ."

or as stated in § 3, pp 396, 397:

"Building and loan associations are in a class by themselves. . . . Such associations may be of a public or quasi-public, character, and are not commercial bodies in the large or popular sense of the term; but

Savings and Loan Assn. of Wisc. v. Loomis, 97 F 2d 831 (in which, after certification to the attorney general as presenting a constitutional question, the plaintiff finally dismissed the appeal to the Supreme Court, 305 US 666).

are, by their very nature, semiphilanthropic, although, as compared with benevolent institutions, they are held to be organizations for private gain."

The above considerations were well expressed in

Union National Bank of Clarksburg, et al. v. Home Loan Bank Board, et al., (1956) 233 F. 2d 695.

There is no reason to suppose that the position of state savings and loan associations is different from the federal associations. This is particularly true in regard to Michigan associations which parallel very closely the federal type of institution. There would seem no basis, therefore, in law or fact to treat the institutions separate and distinct for the problem at hand.

The rule is stated in

Phelps v. American Savings and Loan Association,
121 Mich. 343, 354,

as follows:

"* * * Building and loan associations are peculiar institutions, and, from some real or imaginary benefit that they are supposed to afford the poorer classes of society, are frequently given exceptional advantages over other corporations and private persons, such as immunity from taxation and usury laws. * * *"

Cf

Stoddard v. Saginaw Building & Loan Association,
138 Mich. 83, 79a

These public policy considerations cannot be now disputed. It is clear that unless the appellant can establish that these institutions should no longer be favored by public policy considerations, it cannot properly assert the inapplicability of the mutual savings bank and savings and loan association decisions referred to herein at length, or to otherwise impeach the pronounced policy of both the State of Michigan and the federal government in creating and fostering (historically and in 1952) savings and loan associations.

In the instant case, clearly the pronounced public purpose of the federal and Michigan savings and loan associations has always been the promotion of thrift savings and home ownership. To this end Congress has become involved in these areas under the general welfare clause and has enacted statutes in their furtherance. **Moreover, there is not one iota of proof that these associations have ceased to fulfill their original purpose, as defined by the respective statutes creating them. They still operate in**

“ . . . furtherance of a wholesome public policy to promote building, especially the building of homes, and to develop the habit of thrift.” (Emphasis added) *Hoening v. Huntington National Bank, supra*, (1932) (C.C.A. 6th Circuit) 59 F. 2d 479, 482.

As stated by Judge Story, in the early case of

Girard v. Mayor, Aldermen and Citizens of Philadelphia, Pa., 2 How., U.S., 127, 197, 11 L. Ed. 205:

“ . . . Nor are we at liberty to look at general considerations of the supposed public interests and policy of Pennsylvania upon this subject, beyond what its

constitution and laws and judicial decisions make known to us. . . .”

Thus, public policy does not mean simply what the appellant wants or what a court might decide is good and beneficial in an isolated case; but it is something that grows out of and is formulated by the general experience of the community, culminated in tested statutory and judicial pronouncements.

The appellant seeks to challenge this established public policy treatment of savings and loan associations in Michigan for the year 1952 with the purpose in mind of having this Court conclude that “Change in the manner and scope of doing business by savings and loan associations and national banks since 1900 makes the early cases inapplicable” (Br. 65). Under this heading, appellant discusses the change in the power of national banking associations to make mortgage loans generally and then points to the change in the power of the national banking associations to make long term residential loans (Br 65). On pages 66-70 it discusses the savings and loan associations of the early days, without making any references to the record of this cause. Then, on pages 71-76 and 85-86, it argues that there is no just reason for savings share accounts to be exempt or taxed differently than national bank stock.

The appellant arrives at this conclusion by asserting that “The modern shareholder is different from the shareholder of 1900” (Br. 71-73); that “The modern borrower is different from the borrower of 1900” (Br. 74); and that “The modern associations are no longer mutual” (Br. 74-76). The most that can be said for such argument is that the conclusions appellant urges are supported by neither the record in this cause nor its own logic. The appellant does not support its statements concerning “change” in savings and

loan associations by any reference to the record. The only two witnesses^[150] who testified to the question of "change" denied that there was any significant change in the character, object or purpose of either mutual savings banks or savings and loan associations. Professor Woodworth concluded:

"From the earliest days, there have been considerable changes in the technical methods by which this type of organization [savings and loan associations] operates but there have not been substantial changes in the character of the business in terms of accumulating small thrift accounts and lending those accounts for home building purposes." (R. 894a-895a) (Bracketed material added)

³In reference to the question of mutuality of savings and loan associations, Professor Woodworth stated that in the associations prior to 1900, individuals did not become investing members with the expectation of ultimately becoming borrowing members as well (R. 897a); that there was a very definite separation, in fact, between the shareholders who did and the shareholders who did not want to borrow (R. 897a); and that the essence of the mutuality of these organizations and the basis for their tax treatment was not the fact that the members were both borrowers and lenders (R. 898a). He testified: ✓

[150]

Ethan Doty, Director of the Savings and Loan Division of the Michigan Secretary of State's office, testified that there were no material changes in state associations as to character, purpose and practice and that such associations, to his knowledge, had always served the same classes of people. (R. 734a-743a). Appellant's counsel attempted to establish "change" by cross-examination of Professor Woodworth (R. 894a-901a).

“ . . . I think the fact that the members were both borrowers and lenders, was a rather superficial aspect of the organization. The mutuality in substance applies to the analogy with a mutual savings bank which we call a mutual organization. There was no tieup ever between the depositors and the lenders of those organizations. *The main point is that they are not private profit institutions with capital stock* that is bought and sold on the markets, and, as we have discussed before, is a sort of an investment where you take great chance of gain and great chance of loss. . . .

“ . . . a shareholder did not have to borrow at any time so far as I know in the early associations.” (Emphasis added).

It is therefore evident that the savings and loan associations doing business in Michigan in 1952 were not different in character, purpose and function from the mutual institutions considered by this Court in the savings bank cases of

Mercantile National Bank v. New York, supra,
(1887) 121 U.S. 138,

Davenport Bank v. Davenport, supra, 123 U.S. 83,

Bank of Redemption v. Boston, supra, (1888) 125
U.S. 60,

or the savings and loan associations involved in

First National Bank of Shreveport v. Louisiana Tax Com., (1933) 289 U.S. 60, and

United States v. Cambridge Loan & Bldg. Co., supra,
278 U.S. 55,

Mercantile National Bank v. Hubbard, *supra*, (1899)
98 F. 465, and

Hoenig v. Huntington Nat'l Bank, *supra*, (1932)
(C.C.A. 6th Circuit) 59 F. 2d 479 (cert. denied
287 U.S. 648).

**B. CONGRESS HAS MADE CLEAR THAT THE
PHRASE "OTHER MONEYED CAPITAL IN THE
HANDS OF INDIVIDUAL CITIZENS OF SUCH STATES
COMING INTO COMPETITION WITH THE BUSINESS
OF NATIONAL BANKS," AS USED IN § 5219, DOES
NOT INCLUDE SAVINGS AND LOAN ASSOCIATIONS.**

In 1933 the Congress of the United States enacted the
"Home Owners' Loan Act of 1933."^[151] Among other
things, this legislation for the first time provided for the
organization of federal savings and loan associations under
the auspices of the federal government.^[152] Prior to this
law, all savings and loan associations and similar institu-
tions were organized and supervised solely by the several
states.

The purpose of the law is best stated therein:

"In order to provide local mutual thrift institutions
in which people may invest their funds and in order
to provide for the financing of homes, the Board is
authorized, under such rules and regulations as it
may prescribe, to provide for the organization, in-
corporation, examination, operation, and regulation of

[151]

June 13, 1933, ch. 64, 48 Stat. 128; 12 U.S.C. 1461, et seq.

[152]

12 U.S.C. 1464.

associations to be known as 'Federal Savings and Loan Associations', and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States." Par (a), § 1464, Title 12, U.S.C.

The enactment created a comprehensive pattern for this new type of federal instrumentality and made provision for the method of organization of such entities, their capital requirements, their lending and investment powers and the selection of localities for the establishment of such associations. It also made provision for federal assistance in the raising of capital funds and set forth the requirements for state associations converting into federal associations and the opposite procedure.

The law designated these associations as fiscal agencies of the United States and carefully stated the manner in which, and the extent to which, such associations might be taxed by the several states. The Act provides:

"Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States (except the taxes imposed by sections 1410 and 1600 of Title 26 with respect to wages paid after December 31, 1939, for employment after such date, and except, in the case of taxable years beginning after December 31, 1951, income, war-profits, and excess-profits taxes), and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associa-

tions or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.” (Emphasis added) Par (h), § 1464, Title 12, U.S.C.

In taxing federal savings and loan associations, the state of Michigan follows this mandate.

In view of this law, it cannot be argued with any force that Congress intended that the newly created federal savings and loan associations should be classified with national banks for the purposes of state taxation. The national legislature could have exempted such associations and their shareholders from state taxation altogether, or it could have permitted them to be taxed in the same manner as its own creatures, national banks. As the trial court stated (R. 104a):

“In providing for the taxation of these institutions by the State, Congress could have made the measuring stick, the limit on the rate of taxation, that imposed on national banks, also a creation of Congress. It could have made such measuring stick the rate imposed by the states on state banks and it could have made it that imposed on other moneyed capital. It did none of these things. Instead, it provided that the tax imposed should not be greater than that imposed on ‘other similar local mutual or cooperative thrift and home financing institutions.’

“Congress thus identified the institutions that it considered to be in competition with Federal Savings and Loan Associations. Obviously, Congress did not consider savings and loan associations to be in competition with banks, either state or national.”

Here the sole claim of appellant bank is that savings and loan associations chartered by the federal government and similar associations chartered by the state of Michigan constitute "moneyed capital" in competition with the business of national banks and must be classified with a national bank operating in Michigan in determining whether the state of Michigan has followed the tax pattern permitted by § 5219. Apart from other answers to this unfounded claim, paragraph (h), supra, of the Act by itself makes untenable the argument of appellant. To contend that, despite the Act, federal savings and loan associations should be classified with national banks for purposes of state taxation, and not with similar associations as the law provides, is to argue that Congress does not know its business and would amount to advocacy of complete nullification of the statute.[153]

The language of the Act is clearly intended to provide that the comparative for state taxation of federal savings and loan associations is only "similar local mutual or cooperative thrift and home financing institutions." This means state chartered savings and loan associations and mutual savings banks. Inferentially, these last mentioned institutions are thus classified for tax purposes by Congress. They are compared with federal savings and loan associations and not with national banks.

It would be idle to contend that in making the classification which it did, the Congress was unaware of the

[153]

As the trial Court pointed out, the savings and loan associations were created under the general welfare clause, and national banks were created under the clause permitting Congress to create and maintain a federal monetary system. Thus, initially, we are dealing with two different concerns—each given particular competitive tax status to implement its purposes.

impact on § 5219. This is clearly demonstrated by congressional state tax treatment of **joint stock land banks**,^[154] when it provided:

"Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but **such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.**"

and the similar treatment of the **national agricultural credit corporation**^[155] when it provided:

"Taxation by a State of the shares in National Agricultural Credit Corporations, or of dividends derived therefrom, or of the income of said corporations, or real estate owned by them, shall be such only as is or may be authorized by law in the case of national banking associations; and **taxation by a State of the debentures or other obligations of such corporations shall not be at a higher rate than the rate applicable to other moneyed capital in the hands of individual citizens thereof.**"

[154]

Act of Congress, July 17, 1916, ch. 245, title I, § 16, 39 Stat. 374, 12 U.S.C. 810, et seq.

[155]

Act of Congress, March 4, 1923, ch. 252, title II, § 201, 42 Stat. 4461; 12 U.S.C. 1151, et seq.

Congress was certainly aware of the status and the character, purpose and functions of state savings and loan associations at the time of the enactment of § 5219 and at the time of the enactment of the federal statute creating federal savings and loan institutions in 1933.^[156]

It was undoubtedly also aware of the status of case law, such as

Hoenig v. Huntington National Bank, supra, (1932)
(C.C.A. 6th Circuit) 59 Fed. 2d 479,

holding that savings and loan associations were not included within § 5219. *Therefore, it seems reasonable to conclude that Congress withdrew savings and loan associations from any consideration under § 5219 when it permitted federal associations to be compared only with "similar local mutual or cooperative thrift and home financing institutions."*

The above conclusion is further buttressed by a consideration of proper rules of statutory construction and subsequently proposed legislation.

To aid the Court in ascertaining the legislative intent of the Congress, § 5219 must be construed in light of the "pari materia" rule of construction, which simply means that all statutes relating to the same subject or all statutes having the same general purpose should be read together to constitute a harmonious whole.

[156]

See 82 CJS, § 316, pp 541-544, inc., and § 362, pp 794-795, wherein it is stated that legislatures are presumed to act with full knowledge of existing conditions.

Section 1464, paragraph (h), Title 12, U.S.C., supra, relating to restrictions imposed on the several states in taxing federal savings and loan associations, is such a law. Both it and § 5219 relate to the extent to which the Congress has empowered the several states to impose taxes on the exact types of institutions which are the subject of this lawsuit.

Such statutes should be construed together as though they constituted one law.

United States v. Freeman, 3 How (44 U.S.) 556

United States v. Stewart, 311 U.S. 60

In the *Freeman* case, at p 564, the court said:

"The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts *in pari materia* are to be taken together, as if they were one law. Doug., 30; 2 T. R., 387, 586; 4 Mau & Sel., 210. If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute; Ld. Raym., 1028; and if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute

• • • "

In the *Stewart* case, at pp 64 and 65, the court said:

○ "The Revenue Act of 1916 (39 Stat. 756) was enacted shortly after the Farm Loan Act by the same

Congress and at the same session. Sec. 2 of that Act, like Sec. 22(a) of the 1928 Act, included in taxable income 'gains, profits, and income derived from . . . sales, or dealings in property.' And Sec. 4 of that Act, like Sec. 22(b) (4) of the 1928 Act, exempted from taxation 'interest upon . . . securities issued under the provisions of the Federal farm loan Act.' It is clear that 'all acts, *in pari materia* are to be taken together, as if they were one law.' *United States v. Freeman*, 3 How. 556, 564. That these two acts are *in pari materia* is plain. Both deal with precisely the same subject matter, *viz.*, the scope of the tax exemption afforded farm loan bonds. The later act can therefore be regarded as a legislative interpretation of the earlier act (*Cope v. Cope*, 137 U.S. 682, 688; cf. *Stockdale v. Insurance Companies*, 20 Wall. 323, 331-332) in the sense that it aids in ascertaining the meaning of the words, as used in their contemporary setting. It is therefore entitled to great weight in resolving any ambiguities and doubts. Cf. *United States v. Stafoff*, 260 U.S. 477, 480 * * *."

It is well established that the "pari materia" rule applies even though the statutes to be construed together were enacted at different times.^[157]

Great Northern Ry. Co. v. United States, 315 U.S. 262

Hubbell v. Commissioner of Internal Revenue (C.C.A. 6th Circuit), 150 F. 2d 516; 161 A.L.R. 764.

[157]

The "pari materia" rule is peculiarly applicable to tax legislation. *United States v. Stewart*, *supra*; 311 U.S. 60.
United States v. Goldberg, C.A. Minn. 225 Fed. 2d 180.
Kirkwood v. Arcas, C.A. Cal. 243 Fed. 2d 863.

A realization that Congress intended to create in the Home Owners' Loan Act of 1933 a fundamentally different institution than a national bank was recently pronounced by the United States Court of Appeals, District of Columbia Circuit, in

Union National Bank of Clarksburg, et al. v. Home Loan Bank Board, et al., supra, (1956) 233 F. 2d 695.

In that case, the plaintiffs were four national banks, two state banks and an industrial loan company who sought to prevent issuance of a charter to a federal building and loan association. In granting a motion for summary judgment, the Court of Appeals rejected the argument that such plaintiffs were in any sense local thrift and home financing institutions which could attack the issuance of such a charter, stating at pp 696-697:

" . . . In our opinion neither commercial banks, nor industrial loan companies organized under the laws of West Virginia, even though they do finance homes, are 'local thrift and home-financing institutions' in the sense in which that term is used in Sec. 5(e) of the Home Owners' Loan Act. The next section of the Act; Sec. 6, 48 Stat. 134, 12 U.S.C.A. Sec. 1465, authorizes the Board to spend \$850,000 of congressionally appropriated funds 'in the promotion and development of local thrift and home-financing institutions, whether State or Federally chartered.' Neither the Act nor its legislative history suggests that Congress used the term 'thrift and home-financing institutions' in different senses in §§ 5 and 6, or that Congress contemplated subsidizing commercial banks and industrial loan companies. *We think Congress was concerned only with the creation and the con-*

tinued existence of institutions, such as savings and loan or building and loan associations, which are primarily devoted to receiving savings from their members and lending money on homes.

"Since Congress has shown no intention to protect appellants 'from competition by a Federal instrumentality . . . they have no basis for asserting that the competition . . . is illegal as to them.' . . ."
(Emphasis added)

In the case of

United States of America, ex rel. State of Wisconsin v. First Federal Savings and Loan Association, and Federal Home Loan Bank Board, supra, (1957) 151 F. Supp. 690,

the question presented concerned the right of defendant association to establish branch offices which was denied by state law to associations of a similar kind organized under the law of Wisconsin.

Plaintiff, in that case, among other things, urged that the policy reflected in the National Bank Act requiring conformity to state and local policy on the matter of branches and agencies (Par 36, Title 12, U.S.C.A.) is applicable to the Home Owners' Loan Act and the federal savings and loan associations chartered thereunder. The court held that the federal savings and loan associations could establish branches and that the rule embodied in the National Banking Act, governing that subject for national banks, was in no way applicable because of the completely different nature of the defendant institutions.

In disposing of plaintiff's argument and deciding for defendants, the court said on p 697:

"The plaintiff has failed to point out any reason or fact why this is not a correct construction of the statute. Perforce we hold to the interpretation made by that appellate court.

"Despite the fact that the State of Wisconsin has obviously devoted a great deal more of its efforts to the argument that the policy and decisional law attending the National Banking Act is here applicable, we find nothing that is new and was not considered and disposed of in the North Arlington case in the following language, 187 F. 2d at page 567:

"These savings and loan associations do some of the same things which banks do, obviously. But they do not do a general banking business. They are set up under the declared Congressional purpose to provide thrift institutions in which people may invest their funds and to provide for the financing of homes. There is no danger of any single association becoming a giant monopoly. Its investment area is limited.

• • • " (Emphasis added)

Again, on p 699, the court stated:

"It must be abundantly clear that this court must decline the plea of the State of Wisconsin that it depart from the holdings of the cases of *North Arlington National Bank v. Kearny Federal Savings & Loan Association*, 3 Cir., 1951, 187 F. 2d 564, certiorari denied 1951, 342 U.S. 816, 72 S. Ct. 30, 96 L. Ed. 617, *Springfield Institution for Savings v. Worcester Federal Savings & Loan Ass'n.*, 1952, 329 Mass. 184, 107

N.E. 2d 315, certiorari denied 1952, 344 U.S. 884, 73 S. Ct. 184, 97 L. Ed. 684 and *First National Bank of McKeesport v. First Federal Savings & Loan Assn. of Homestead*, 1955, 96 U.S. App. D. C. 194, 225 F. 2d 33."

In light of the passage by Congress in 1933 of the act creating federal savings and loan associations, which specifically provided for the method by which the several states might tax them, it seems altogether plain that the broad and general language of §. 5219 (in which appellant seeks to wrap and enclose these mutual thrift societies) cannot by any stretch of the imagination be held to embrace them.[158]

The intention of Congress to further distinguish the two institutions taxwise is emphasized by the provisions of the Internal Revenue Code of 1954. Section 593 of the Code provides a method for savings and loan associations to create a reserve for bad debts which, in practical effect, results in little or no income tax liability for nearly all savings and loan associations. This section constitutes more than a difference in accounting methods, as is illustrated by the fact that only **one** of the sixteen savings and

[158]

Another example of Congressional intention to classify various financial institutions in a different manner is its treatment of federal credit unions created in 1933 by the "Federal Credit Union Act," June 26, 1934, ch. 750, § 1, 48 Stat. 1216; § 1751, et seq., Title 12, U.S.C. Congress required that federal credit unions "organized * * * for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes" were not to be taxed by the states. The act permits the states to tax the *holdings* at a rate not to "exceed the rate of taxes imposed upon holdings in domestic credit unions". Still another is the complete exemption from taxation of national farm loan associations (July 17, 1916, ch. 245, title I, § 26, 39 Stat. 380; 12 U.S.C. 931).

loan associations in question incurred **any** federal income tax liability in 1952 (DF. Ex, 210; R. 748a, 1276a).

Also, Section 591 permits the savings and loan associations to deduct "dividends" to the savings share account holders in the determination of taxable income for federal income tax purposes, which privilege is not granted to banks. Banks, on the other hand, are included under § 166(c) of the Code and are restricted to the same method of charging off bad debts as is conferred upon all other corporations. If Congress regarded building and loan associations as "competing moneyed capital," it is difficult to understand why national banks should receive such unique treatment.

This different treatment undoubtedly is due to Congress' recognition of the essential differences between these two types of institutions. Such recognition is further illustrated by the fact that in the District of Columbia Congress does not subject building and loan associations to the same rate of taxation as it imposes upon commercial banks. Under appellant's theory that a difference in rates on these institutions is contrary to § 5219, the District of Columbia tax legislation would be unlawful as to national banks if passed by a state legislature.^[159]

[159]

Section 47-1701 of the District of Columbia Code provides:

"Each national bank as the trustee for its stockholders . . . shall pay to the collector of taxes of the District of Columbia per annum 6% on . . . gross earnings . . ."

Section 47-1704 states:

"Building associations in the District of Columbia shall pay to the collector of taxes of the District of Columbia two per centum per annum on their entire gross earnings for the preceding year ending June 30th. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 9; Apr. 28, 1904, 33 Stat. 564, ch. 1815)."

Reference to the tax laws of other states applicable to these two

The foregoing legislative pattern illustrates, without doubt, that Congress never did, and does not now, consider savings and loan associations to be within the purview of § 5219. It never did, nor does it now, intend that such institutions should be regarded as institutions employing moneyed capital in substantial competition with the business of national banks.[160]

types of institutions further indicate their distinct treatment for tax purposes. This but further illustrates the absurdity of the appellant's discrimination argument.

[160]

Appellant's contention that the lower courts reasoned that the Home Owners' Loan Act of 1933 "evidences a Congressional intent to exclude shares in savings and loan associations from the operation of R.S. 5219" (Br. 45), is absolutely groundless. The trial court analyzed the effect of the Home Owners Loan Act of 1933 thusly:

"And if the Court by its broad language in the Hartford case and by its emphasis on competition in the Shreveport case indicated any doubt as to the power of the State to exempt building and loan associations, the congressional act later in 1933 appears sufficient reason for holding that Congress has removed that doubt. * * *" (R. 101a)

"I find this 1933 action on the part of Congress very significant.

"—In providing for the creation of Federal Savings and Loan Associations, Congress acted under its welfare powers, while in its earlier action providing for national banks, it had acted under its monetary powers.

"—In the 1933 Statute, Congress determined that savings and loan associations were 'local mutual thrift institutions in which people may invest their funds' and (which) 'provided for the financing of homes.'

"Congress determined that the interest of the people of the United States would be served by the organization and operation of such institutions and that the appropriation of public funds for that purpose was justified." (R. 103a)

"Congress thus identified the institutions that it considered to be in competition with Federal Savings and Loan Associa-

5.

THE "CAPITAL" OF THE SAVINGS AND LOAN ASSOCIATIONS IN MICHIGAN IS NOT MONEYED CAPITAL COMING INTO SUBSTANTIAL COMPETITION WITH THE BUSINESS OF NATIONAL BANKS WITHIN THE MEANING OF SECTION 5219.

Since § 5219 is designed to prevent discrimination which would result in unequal or unfriendly competition between the business of national banks and a relatively material part of other moneyed capital, the question of substantial competition is immaterial because of the lack of such discrimination. Furthermore, the partial exemption rule and the statutes and evidence pertaining to the function and purpose served by the savings and loan associations render the question of competition immaterial.

At the outset, it is noted that the competition with which § 5219 is concerned is employment of other moneyed capital in substantial competition with the employment of the share capital of national banking associations. The competition question directs itself to the employment of the capital account of national banks as compared to other moneyed capital, which, under the appellant's definition, would include savings and loan share accounts and bank deposits. By appellant's definition the "other moneyed capital," in the case of savings and loan associations, consists of savings share accounts employed in the residential mortgage market; yet, all of the appellant's residential mortgages were made through employment of its "other moneyed capital," namely, from deposits, and not from its capital account (R. 687a).

tions. Obviously, Congress did not consider savings and loan associations to be in competition with banks, either state or national." (R. 104a)

There is thus posed an interesting question of competition. If appellant's only allegation of competition is competition **for loans**, and loans are conceded not to have been made from the moneyed capital represented by appellant's shares of stock (capital account), how can the appellant claim that there is **any** competition between the employment of the moneyed capital represented by savings shares and the moneyed capital represented by its own stock?

If the competition is **for savings and their employment**, there is no **rate** discrimination.^[161]

This Court recognized the verity of this incongruity in the mutual savings bank cases and was well aware of it in *First National Bank of Shreveport v. Louisiana Tax Com.*, *supra*, (1933) 289 U.S. 60, where it stated:

"There is a fundamental difference between banks, which make loans mainly from money of depositors, and the other financial institutions, which make loans mainly from the money supplied otherwise than by deposits."

The appellant constructs a significant phase of its argument (including that showing the growth of savings and loan associations) on the assumption that § 5219 protects appellant in its competition with savings and loan associations for deposit and savings moneys. The only cases dealing with this question are *Clement National Bank v.*

[161]

This Court has refused to base discrimination on a mere difference in rate of tax but, instead, has looked to the over all tax burden and the relationship of that burden to the competitive employment of other moneyed capital. The above further illustrates the difference between the nature, financial structure, and purpose of a mutual institution, as compared to a commercial banking institution, and the necessity of handling these differences.

Vermont, (1913) 231 U.S. 120; *People v. Goldfogle*, *supra*, (1924) 305 N.Y.S. 870; 123 Misc. 399 (aff'd by App. Div. 211 N.Y.S. 85), and *Hoenig v. Huntington National Bank*, *supra*, (1932) (C.C.A. 6th Circuit) 59 F. (2d) 479, cert. denied 287 U.S. 648.

The *Hoenig* case, *supra*, disposed of the "competition for deposits" question as follows:

"As to the alleged 'competition for deposits,' it is evident from the universal expressions of opinion by the Supreme Court that competition, in the sense intended, is limited to the employment of moneyed capital 'substantially as in the loan and investment features of banking.' Deposits constitute moneyed capital, but national banks are not taxed upon their deposits any more than are savings banks and building associations; and we are here primarily concerned only with what is done with such moneyed capital after it is secured, not with competition to obtain it. There is clearly no distinction in law between the competition for deposits as between national banks and savings banks, and the same competition as between national banks and building associations. Thus *Mercantile Nat. Bank v. New York*, *supra*, seems directly in point on this issue."

or, as otherwise stated in *People v. Goldfogle*, *supra*, (1924) 205 N.Y.S. 870, at p 879, 123 Misc. 399 (aff'd by App. Div. 211 N.Y.S. 85):

"... The very depositor in the national bank itself is lending money to the bank, often at interest, but such persons do not actually compete for business with a national bank."

In the *Clement* case, *supra*, 231 U.S. 120, it was argued that Congress in enacting § 5219 exempted national bank deposits from taxation. In concluding that Congress did not so intend, this Court stated, at p 135:

“• • • With respect to the taxation of depositors' credits, the Federal statute does not prescribe a rule; and, the property being normally subject to the State's taxing power, there is no warrant for implying a restriction which would extend beyond the requirements of protection from the prejudicial effect of such exactions as would be unjustly discriminatory.”

These cases would rule out both savings accounts and bank deposits as competing other moneyed capital.^[162]

Ignoring such authorities, appellant would prove the existence of substantial competition between noncomparable institutions by attempting to show that the Michigan National Bank employs a part of its assets, represented by deposits, in an area in which savings and loan associations have traditionally done business by employment of their savings account moneys.

Since both are subject to comparable taxation in Michigan, it is immaterial to the resolution of the issue in this cause whether they are **both** considered to be within or without the concept of “other moneyed capital” for § 5219 purposes. This is illustrated by simple propositions that control here:

[162]

Review of the legislative proceedings pertaining to the 1923 amendment to paragraph (b) of § 5219 indicates that some United States senators asserted in reference to the proposed amendment that it would be absurd to include bank deposits in a national bank within the classification of competing moneyed capital (See 64 Cong. Record 1458 [1923]). The exemption of savings banks by this Court was specifically noted and approved by the House Manager (64 Cong. Record 4802 [1923]).

1. If bank deposits and savings and loan share accounts **are** considered "other moneyed capital" in competition with investments in bank stock,^[163] though there

[163]

Appellant quotes from p 7 of "Hearings Before Subcommittee No. 2 of the House of Representatives Committee on Banking and Currency, Washington, D.C.," on February 16, 1960, and lifts from context certain statements appearing there. In quoting from the statement of the Comptroller of the Currency, appellant failed to note that the Comptroller had stated, on p 6:

"Our banking system today is in a very healthy condition." and then in reference to the question of competition said:

"In addition to the competition between commercial banks, banks are finding themselves more and more in competition with other types of bank and nonbank financial institutions. Among the other types of financial institutions competing with commercial banks are mutual savings banks, Federal and State chartered savings and loan associations, Federal and State chartered credit unions, life insurance companies, commercial finance factors, fire and casualty insurance companies, personal and sales finance companies, investment companies, corporate pension and profit-sharing plans, production credit associations, and even various agencies of the Federal Government such as the Federal intermediate credit banks, the Farmers Home Administration, and postal savings.

"To illustrate this competition, it is notable that while insured commercial banks increased their savings deposits an estimated \$2.1 billion in the year 1959, savings and loan associations increased their share accounts by an estimated \$6.6 billion.

"Thus, during 1959 three times as much money was placed in share accounts in savings and loan associations as in savings deposits in commercial banks. In the areas in which they operate, mutual savings banks also are an important competitor for savings deposits. Credit unions are making important progress.

*"In the making of loans, all of the organizations above mentioned, except postal savings, are in competition to some extent with commercial banks and are of increasing importance. * * **

(Emphasis supplied)

From the Comptroller's remarks (quoted out of context by the appellant) it is clear that the Comptroller was concerned about

might be substantial competition, there is no tax discrimination because national bank deposits and savings share accounts are subject to the **same** tax at the **same** rate.

2. If national bank deposits and savings and loan share accounts are **not** "moneyed capital" within the purview of § 5219, there is no competition between national banking associations and savings and loan associations within the purview of § 5219. This follows from the fact that the appellant does not loan its **capital stock** in the residential mortgage field, but only **deposit moneys**.

Appellees submit that the question of "substantial competition" is a moot question in the instant case, inasmuch as there cannot be "substantial competition" between savings and loan associations and national banks as a matter of law. The existence of factual competition alone, however keen or great in amount, is not sufficient to meet the issue of substantial competition because the very character and nature of savings and loan associations is such that they cannot be said to be in substantial competition in a legal sense.^[164] *Facts alone cannot and do not meet the*

the competition—which is the appellant's real concern in this cause—for deposit moneys and not in the making of loans.

[Appellant indicates on p 83 of its brief that the Comptroller referred to a specific statement of his deputy. This is not true. The Comptroller said only this: "For the information of the committee, I should like to place in the record an address on 'Competition in Commercial Banking' made in 1959 by Mr. L. A. Jennings, First Deputy Comptroller of the Currency, before the Pennsylvania Bankers Association, which goes into greater detail as to the extent to which commercial banks face competition from other types of institutions. * * * (Ibid, p. 7)]

[164]

This explains the rationale of the decisions permitting partial exemption of other moneyed capital for public policy reasons regardless of amount and even though in competition with some phases of the business of national banks.

legal requirements of "substantial competition with the business of national banks:"

First National Bank v. Hartford, supra, (1926) 273
U.S. 548,

at p 552:

" . . . The validity of the tax complained of depends upon whether or not the moneyed capital in the state thus favored is employed in such a manner as to bring it into substantial competition with the business of national banks.

"The question thus raised involves considerations *both of fact and of law*. To answer it, it is necessary to ascertain the nature and extent of the moneyed capital in the hands of individual citizens within the state and the relation of its employment, in point of competition, to the business of plaintiff and other national banks [*QUESTION OF FACT*]. It is necessary also to ascertain the precise meaning to be given the statute as applied to the facts in hand in order to determine whether the *particular moneyed capital* and the *particular competition* with which we are here concerned are moneyed capital and competition *within the spirit and purpose of the statute* [*QUESTION OF LAW*]. The question is thus a mixed one of law and fact, and in dealing with it we may review the facts in order correctly to apply the law. . . ."

(Bracketed material and emphasis added)

The *fact* of "competition" is the "nature and extent of the moneyed capital" and the "relation of its employment, in point of competition, to the business of . . . national banks." The *law* of "competition" is "to ascer-

tain the precise meaning to be given the statute as applied to the facts in hand in order to determine whether the particular moneyed capital and the particular competition . . . are moneyed capital and competition within the spirit and purpose of the statute." The *fact* of "competition" is related to a *quantitative* analysis of alleged competition compared to the business of national banks, i.e., the facts involving the nature and scope and detail of competitive activity. The *law* of "competition" is related in a *qualitative* way to the factual competition with the business of national banks in light of the purpose sought to be attained by § 5219. It is the application of the *law* of "competition" to the conclusions reached as to factual competition which determines whether the competition is of such a *character or quality* that it will substantially interfere with the operations and proper functioning of national banks and thus constitute a hostile and unfriendly discrimination against the business of national banks and discourage investments in national bank shares.

Thus, if competition is found to be substantial in amount but not of the kind or quality which evidences an intent to discriminate against investments in national bank shares and thereby create an unfriendly or hostile attitude against the business of national banks and jeopardize the national banking system, such competition is not "substantial". [165]

This was well recognized in

[165]

In some cases the courts have used the phrase "other moneyed capital" as being limited to capital employed in substantial competition with the business of national banks, while, in other cases, the courts have referred to "moneyed capital" as the kind of capital that can compete in a legal sense.

*First National Bank of Shreveport v. Louisiana Tax
Com., supra*, (1933) 289 U.S. 60,

and many of the "partial exemption" cases which realistically approached this problem and held that savings and loan associations are of a completely different character than national banking associations and that these differences are such that they cannot come into substantial competition with the business of national banks.

Appellees submit that the law of "substantial competition" dictates that **Michigan savings and loan associations, confined by law to the narrow activity of accumulating share account savings and lending these accumulations for home ownership purposes, are not comparable to national banking associations and, therefore, as a matter of law, cannot be in substantial competition with the business of banking.**

While the dominant theme in the cases excluding mutual savings banks and savings and loan associations from § 5219 is that such mutual thrift societies are entitled to different tax treatment, as a matter of law, because they serve well-established and recognized public policy purposes of encouraging thrift savings and home ownership, these institutions are also excluded in many of the cases because they were not considered *comparable* to national banks and, ~~therefore, were not found to be in substantial competition~~ with the business of national banks.

This is illustrated by

Consolidated National Bank v. Pima County, supra,
5 Ariz. 142, 48 P. 291,

decided the same year as *Mercantile National Bank v. New*

York, supra, 121 U.S. 138. After review of the prior decisions of this United States Supreme Court, the Court held, (p. 147) on authority of the *Mercantile* case, *supra*:

“• • • Said building and loan association cannot be compared with a banking association. The exemption or rather the failure to tax the shares of the said building and loan association does not make the tax [on bank shares] in question illegal.”

Of like effect and holding are cases such as

Bank of Redemption v. Boston, supra, 125 U.S. 60.

In this case, the court considered the nature and character and basic purpose of mutual savings banks, as contrasted to that of national banking associations.

This parallels the reasoning in

Mercantile National Bank v. New York, supra, 121 U.S. 138,

where, at p 161, the court stated that:

“• • • No one can suppose for a moment that savings banks come into any possible competition with national banks of the United States. They are what their name indicates, banks of deposit for the accumulation of small savings belonging to the industrious and thrifty: • • •”[166]

[166].

The court then excluded such associations from the restraint of § 5219 on the grounds of the public policy question developed above.

This same thought, as shown above, was given specific expression by the courts in

Hoening v. Huntington National Bank, supra, (1932) (C.C.A. 6th Circuit) 59 F. 2d 479;

First National Bank of Shreveport v. Louisiana Tax Commission, supra, (1933) 289 U.S. 60;

First National Bank of Glendive v. Dawson County, supra, (1923) 66 Mont. 321, 213 P. 1097; and

Merchants' National Bank of Glendive v. Dawson County, supra, (1933) 93 Mont. 310, 19 P. 2d 892.

In the *Hoening* case, *supra*, the court stated in regard to alleged competition of savings and loan associations of Ohio, at p 482:

“• • • The two types of institutions have essentially different characteristics; the one is purely commercial in character, in which the assets must be kept liquid; the other is sui generis, non-commercial, and without a comparable need for liquid assets. The one is founded and conducted upon banking principles; the other was created in answer to a need which the banks could not and did not satisfy, and in furtherance of a wholesome public policy to promote building, especially the building of homes, and to develop the habit of thrift.”

After referring to the earlier decisions exempting mutual savings banks and savings and loan associations, the court concluded in reference to those decisions at p 482:

“• • • In those cases the fundamental and substantial differences between commercial institutions, such as national banks, and institutions of the in-

surance company, savings bank, and building association types, were the real basis of the finding of want of competition; and our decision of the present issue is *founded upon a recognition of these same differences.*" (Emphasis added)

The above extracts from the *Hoenig* decision, *supra*, show that the court found that the public policy exemption, given expression in the earlier mutual savings bank and savings and loan cases, was founded upon the distinct character of the savings and loan institution, which was not comparable to a national banking association.^[167] Upon the same premise, the court also was able to conclude (as the courts have in some of the prior decisions referred to above) that there did not exist substantial competition.

Although we might say that the question of substantial competition between savings and loan associations and national bank associations in some sense poses a question

[167]

In reference to the content of this statement, appellant takes opposing views in its brief. A substantial part of its argument is directed to the proposition that the nature, character and purpose of competing institutions is immaterial and that the appellees are in error to rely upon *Bank of Redemption v. Boston*, *supra*, (1888) 125 U.S. 60, and *First National Bank of Shreveport v. Louisiana Tax Com.*, *supra*, (1933) 289 U.S. 60, for the proposition that they are material under § 5219 (Br. 40-41, 64, 78). Appellant would distinguish the *Shreveport* case, *supra*, as dealing with factual competition and asserts that the *Bank of Redemption* case, *supra*, in this particular is overruled by the *Hartford* case, *supra* (Br. 64). Yet, surprisingly, appellant plaintively argues, without any facts to support its argument, that the character, nature and purpose of these mutual thrift institutions has so changed that today they are no longer quasi-public corporations and, thus, their mutual savings shares cannot be taxed by the states any differently than the stock of a commercial national bank (Br. 64-77).

of fact, it is still only a question of fact directed at the essential character and nature of these institutions and not one directed to the immaterial detail of their operations.

If this be not true, then the language and the rationale of all the decisions in reference to the treatment of savings and loan associations and mutual savings banks become a meaningless dichotomy of words. If these decisions speak to anything, they speak to the power of the State of Michigan to exempt or give preferential treatment to savings and loan associations because of their unique character and because of the manifest public policy that they have traditionally served, i.e., the encouragement of thrift and home ownership.

This is completely in accord with the holding of this court in the

First National Bank of Shreveport v. Louisiana Tax Commission, supra, (1933) 289 U.S. 60,

at p 64, wherein the court stated:

“ . . . If we may take judicial notice of the functions of these alleged competitors of the plaintiffs, there appears ample basis for the classification, among other things, in this: There is a *fundamental* difference between banks, which make loans mainly from money of depositors, and the other financial institutions, which make loans mainly from the money supplied otherwise than by deposits. . . .” (Emphasis added)[168]

[168]

Appellant urges, on authority of the *Hartford* case, *supra*, 273 US 549, that *factual* competition is controlling and that, therefore,

Ignoring the **law of competition**, appellant nevertheless has attempted to prove the **fact** of substantial competition. Appellees submit that the facts pertaining to competition support the law of competition, namely, that mutual thrift institutions like savings and loan associations do not compete with a significant enough phase of the business of national banks to be in substantial competition as a matter of fact.

As indicated above, the facts establish that appellant does not employ the capital represented by its stock in any competition with the business of savings and loan associations. Even if we assume for argument's sake that the question of substantial competition is limited to the facts concerning the employment of other moneyed capital in

any consideration of the character of the alleged competing institution is immaterial. This argument begs the question. To be in actual competition, you must be so constituted and organized that factual competition is possible. Can a man without legs compete in a foot race? Thus, if appellant bank is able to receive deposits and to loan these deposits for home ownership purposes, how can an institution that cannot receive deposits and, thus, cannot lend such deposits be in substantial competition with this phase of appellant's business? Competition, it is submitted, relates to the ability of persons to act in the same field of endeavor on comparable terms. If not comparable, how can national banks and savings and loan associations be in substantial competition? This is the basis for the exclusion of insurance companies and general business concerns from the purview of § 5219. It is equally applicable to savings and loan associations in addition to the public policy *partial* exemption rule.

The different and distinct nature and the narrow purpose and activities of the savings and loan associations, as contrasted to the broad monetary and commercial powers and activities of national banks, led Professor Woodworth to conclude that these institutions could not be in substantial competition within the purview of § 5219 (R. 854a-855a). Thus, savings and loan associations are not in a position to challenge competitively the business of national banks.

competition with the business of national banks, clearly the substantiality rule requires a factual showing that the competing moneyed capital complained of represents a relatively material part of the total moneyed capital employed in competition with national banks and, further, that such moneyed capital is in competition with a substantial phase of the business of national banks.^[169] The latter test is admitted by the appellant—the former it asserts is immaterial under *First National Bank v. Hartford*, *supra*, (1927), 273 U.S. 548.

Appellees' witness Professor George Walter Woodworth, Professor of Finance at the School of Business Administration, University of Michigan, who testified at length concerning the nature and activities and economic structure of commercial national banks, mutual banks, and savings and loan associations, concluded that savings and loan associations were not in substantial competition in a true, factual, or economic sense with appellant or other national banks. Only brief references have been made to it here. Verbatim reading of his testimony clearly indicates the true nature of the competitive situation at bar (R. 803a-910a).^[170]

[169]

These were the tests laid down in *Mercantile Nat'l Bank v. New York*, *supra*, (1887) 121 U.S. 138, and *First National Bank of Guthrie Center v. Anderson County Auditor, et al.*, *supra*, (1926) 269 U.S. 341, and it is submitted that nothing in the *Hartford* case is inconsistent with the requirement that there be a factual showing that a relatively material part of total "moneyed capital" in competition with substantial phases of the national bank business is preferentially treated taxwise.

[170]

His testimony is analytical, instructive and informative. It was developed in reference to the specific circumstances of this cause. It was, significantly, the only expert opinion offered at the trial of this cause concerning the comparison between national banks and savings and loan associations.

Professor Woodworth was asked the question:

"• • • was money invested in share accounts of savings and loan associations in 1952 in competition with the business of national banks within the meaning of Section 5219 of the Revised Statutes?" (R. 852a)[171]

For purposes of the witness' answer, the word "competition" was defined to mean:

"• • • the extent to which the two institutions, that is the national banks and savings and loan associations are operated in the same areas or fields of financial business?" (R. 854a)

Professor Woodworth answered as follows:

"In the light of the facts that I developed in my previous testimony, my answer would be no.

"First, the business of national banks in 1952 was predominantly in the monetary field, that is, as creditors, holders, transferers and lenders of money;

"Second, the business of savings and loan associations was predominantly in the field of gathering together thrift savings and lending these accrued savings for home ownership on the basis of long-term residential mortgages;

[171]

Michigan Court Rule 37, § 16, permits an expert witness to be asked the ultimate question of fact.

"Third, the purposes and functions of these two institutions were too different and the area of common operations was too narrow to constitute substantial competition in an economic sense.

"Passbook savings accounts of national banks were about 15 per cent of their total assets in 1952. Residential real estate loans of the national banks were 6 per cent of their total assets in 1952.

"Moreover, the fact that each institution specialized to a high degree in different types of loans in the residential loan field narrowed even further the area of real competition.

"Over three-fifths of residential mortgage loans of national banks at the end of 1952 were guaranteed or insured by FHA and VA. Less than two-fifths were conventional mortgage loans.

"In contrast, only about one-fifth of residential mortgage loans of savings and loan associations were FHA and VA mortgages, the remaining four-fifths were conventional mortgages, almost all of which were made with a longer maturity or were for a larger amount than permitted by law to national banks.

"Attention should also be called to the fact that the scope of competitive operation is much narrower in the field of FHA and VA mortgage loans than in the area of conventional mortgage loans.

"This follows from the fact that government regulations require uniformity in rates, maturities, bases of appraisal, home specifications, and in other respects.

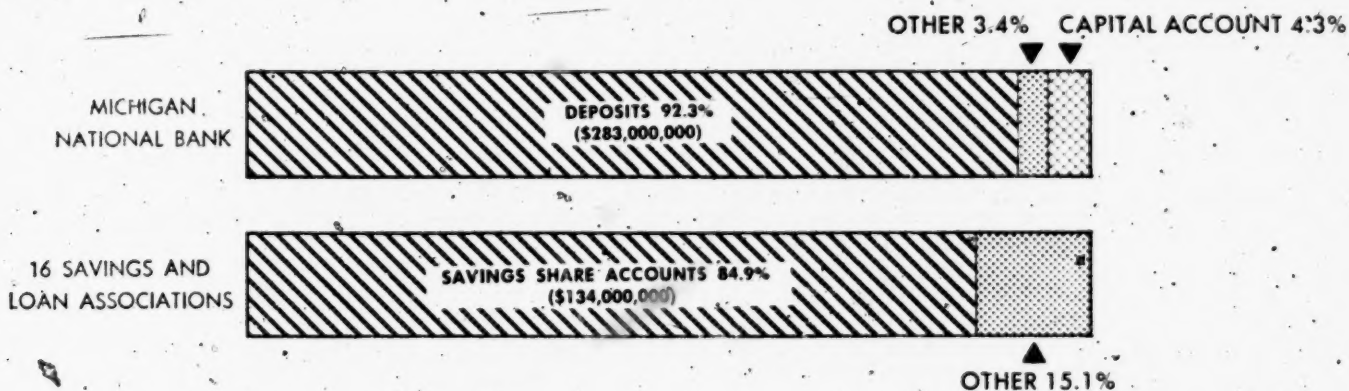
"It is also relevant that the overall competition of savings and loan associations with national banks in the State of Michigan were substantially less than in the United States as a whole.

"• • •" (R. 854a-855a)

ADDITIONAL FACTS AS TO ALLEGED COMPETITION

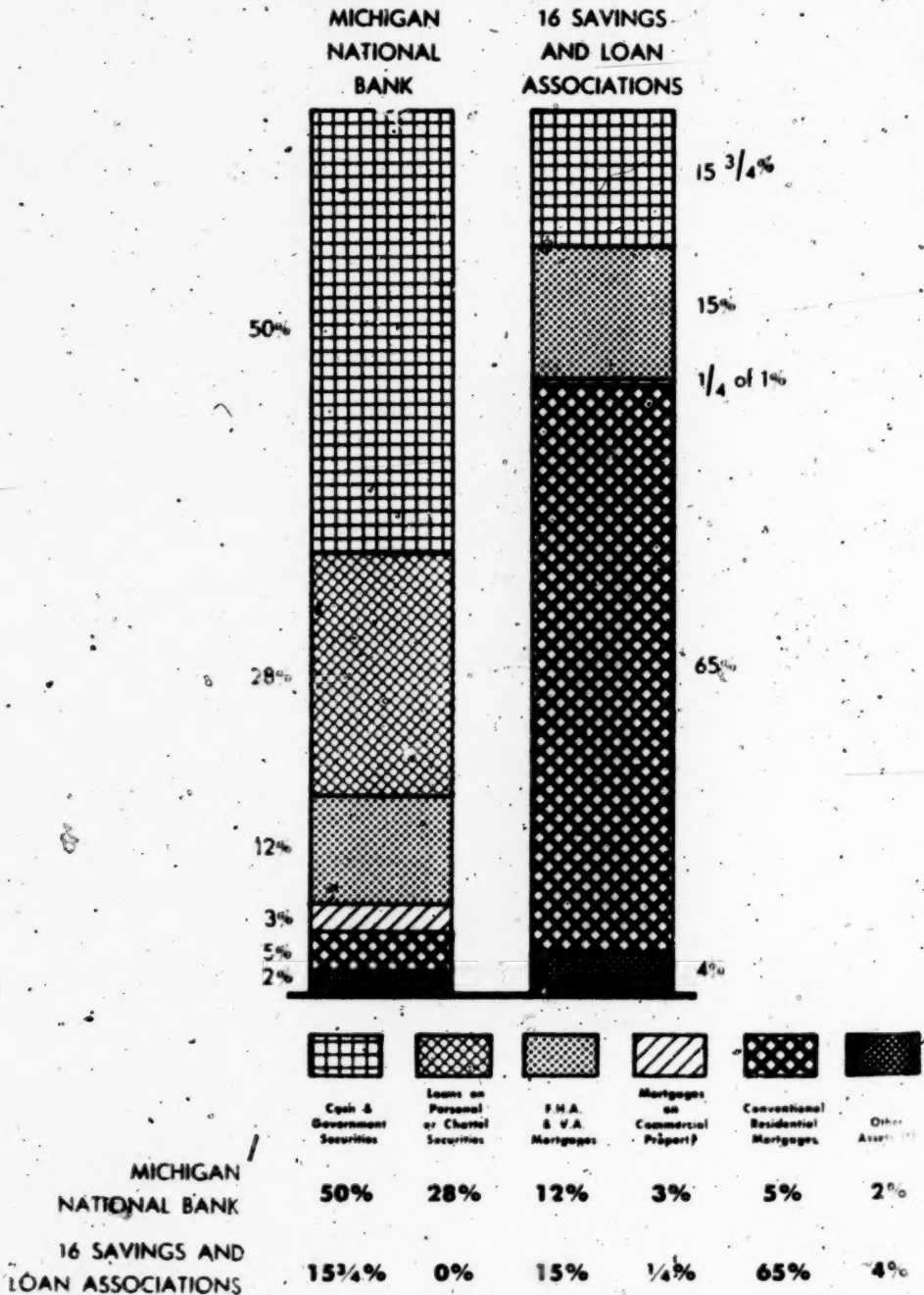
The following additional facts concerning the appellant bank and the allegedly competing 16 savings and loan associations, and the following charts displaying some of those facts graphically, establish the lack of substantial competition in a factual sense.

Graph Reflecting the Source of Assets of Michigan National Bank and 16 Savings and Loan Associations for the Year 1952



(Pl. Ex. 3; R. 529a, 531a; Df. Ex. 209; R. 748a, 1273a-1274a).

Graph Reflecting Employment of Assets of Michigan National Bank and 16 Savings and Loan Associations for the Year 1952 in Order (Ton to Bottom) of Liquidity.



An investment in appellant's bank stock is not comparable to an investment in a savings and loan association share account (R. 849a, 850a). The first is primarily an equity investment and the latter, a savings investment (R. 850a, 851a). Investments in national bank stock are not insured by any federal agency, while investments in savings share accounts, up to \$10,000 in amount, are insured by the Federal Savings and Loan Insurance Corporation (R. 851a). The appellant faced no competition in obtaining share capital in 1952 (R. 676a). While appellant was permitted to engage in all the activities permitted national banking associations, including the ability to create checkbook money and receive time, savings and demand deposits) savings and loan associations were able to engage solely in the narrow activity of making first mortgage loans secured by residential properties (with minor exceptions) or loans on the security of its savings shares accounts (R. 854a, 855a). To carry on their business, these associations were able to use, as investment funds, only their savings share account moneys, reserves, undivided profits, and limited loans^[172] while appellant bank was able to use its capital account of approximately \$13 million plus \$283 million of deposits, representing over 92% of its total assets (Df. Ex. 202, R. 672-673a, 1262a, 1263a; Df. Ex. 209, R. 748a, 1274a; Pl. Exs. 36-A through 36-J, R. 147a, 979-988a; Pl. Ex. 45-A, R. 191a, 1007a; Pl. Ex. 61-F, R. 336a, 1017a; Pl. Ex. 73-E, R. 451a, 1126a; Pl. Ex. 77-E, R. 452a, 1159a; and Pl. Ex. 81-E, R. 453a, 1193a). By the use of such deposit moneys as part of its usable or working capital, the appellant bank was able, in 1952, to receive gross earnings in excess of 91% of its total capital account—approximately \$12 million as compared to approx-

[172]

These associations could borrow limited amounts from the Federal Home Loan Bank Board.

imately \$13 million (Df. Ex. 202, R. 672a, 1262a, 1318; Df. Ex. 205, R. 672a, 1266a, 1267a). On the other hand, the gross earnings of savings and loan associations amount to 5% of their total share accounts (Df. Ex. 209, R. 748a, 1273a, 1274a; Df. Ex. 210, R. 748a, 1275a, 1276a).

In 1952, the appellant showed an operating profit before taxes of \$5,300,000 annually—approximately double the average rate for all national banks (R. 1322); it was able to retain approximately \$2 million thereof as additional capital after payment of taxes, dividends and interest—likewise, approximately double the average rate for all national banks (R. 1322).

Further, by employment of approximately 22% of its assets, appellant in 1952 was able to loan on the security of real estate approximately five times the total value of its capital account, which total investment returned about 22% of its total gross earnings (Df. Ex. 212, R. 749a, 1278a; R. 762a, 905a). The deposits of appellant bank represented over 200% of the total share accounts of the sixteen savings and loan associations (Df. Ex. 202, R. 672a, 1263a, 1319; Df. Ex. 205, R. 672a, 1266a; Df. Ex. 209, R. 748a, 1273a).

Appellant was able to make total loans in excess of \$148 million and total loans secured by real estate in excess of \$62 million. This loan activity included loans of diversified type and character, including loans to individuals on security of their financial statements and installment loans (the latter accounting for over \$5 million of income in 1952). The activity of savings and loan associations was primarily limited to the conventional residential loan field, in which area appellant loaned only about \$15,000,000 of its total assets of over \$306,000,000. In addition, appellant loaned some \$35,000,000 secured by the Federal Government (F.H.A. and V.A.). The savings and loan associations involved, how-

ever, participated only in a minor way in the F.H.A. and V.A. mortgage fields. Nine of the associations did not make F.H.A. mortgages and six of the associations made no V.A. mortgages (Df. Ex. 200C, R. 714a, 1261a). The specialization by the appellant bank in the federally guaranteed home mortgage field is explained by the liquid nature of such investments as compared to conventional mortgages. On the other hand, specialization by the savings and loan associations in the conventional field is explained by the greater flexibility of these mortgages and the lesser liquidity requirements of these associations (R. 841a).

The concentration by the savings and loan associations in the conventional loan field was in an area prohibited to national banks by Congress. Only 6.4% of the total conventional loans made by the sixteen associations were for a term and an amount within permissible investments by appellant bank (Df. Ex. 200, R. 714a; 1258a). Approximately 2% of this 6.4% was in the individual home construction field, and appellant's witness Fairles could not recall having participated in this field in any significant way (R. 674a, 675a). To the extent they constituted loans other than for home purchase or construction, the "other purpose loans" (referred to on the reports of the savings and loan associations and on Df. Ex. 200C, R. 714a, 1261a) were not the type of loans that appellant bank secured by a first mortgage on real estate. The home improvement loans of the sixteen associations (amounting to .5% of total loans) were secured by first mortgage loans.^[173] The appellant bank made no such improvement loans in 1952.^[174]

[173]

Three associations did make F.H.A. Title I and Title VIII improvement loans in the amount of approximately \$23,000, representing an insignificant fraction of the total loans made.

[174]

F.H.A. improvement loans are guaranteed by the Federal Government and are not secured by real estate mortgages.

Most of the loan activity of the bank was of a type that savings and loan associations could not make because their loan activity was limited to loans secured by first mortgages on real estate or savings share accounts.[175] Na-

[175]

Of the total mortgages recorded in Michigan in 1952, 24.3% were made by savings and loan associations (R. 855a). In the entire United States the comparable proportion was 35.8% (R. 855a). During that year, the sixteen associations doing business in the same cities as appellant bank made total commercial loans secured by business properties amounting to \$293,000 — *one-third of one per cent of their total real estate loans or about one-quarter of one per cent of their total assets* (Df. Ex. 200C, R. 714a, 1261a). Appellant bank on the other hand, made approximately \$8 million of such loans, which constituted 13% of its total real estate loans and was in excess of 2½% of its total assets.

Of loans made by the saving and loan associations practically all (99½%) were secured by residential real estate, while only 87% of appellant's mortgage loans were so secured. Of these 87%, 70%, or ¾ (R. 842a) were guaranteed by the Federal Government as F.H.A. and V.A. loans.

Therefore, only 26% of appellant's mortgages were *conventional residential non-business mortgages*, 61% were guaranteed F.H.A. and V.A. mortgages, and 13% were mortgages on commercial property.

The sixteen associations, on the other hand, carried F.H.A. and V.A. loans amounting to only 19% of total loans (841a; Df. Ex. 200C, R. 714a, 1261a), *conventional residential non-business loans* amounting to 81% of their total loans, and mortgages on commercial property being practically nil (⅓ of 1%).

The total loan activities engaged in by the institutions illustrate different objectives. Only 42% of appellant bank's total loans were secured by real estate, while 58% were not so secured (Pl. Ex. 4C, R. 537a, 948a). All of the associations' loans were secured by real estate (Df. Ex. 202, R. 672a, 1262a, 27b).

As an illustration, 100 average borrowers from appellant in 1952 consisted of 29 persons acquiring F.H.A. and V.A. loans, 5 businessmen putting up commercial property as security, 8 persons acquiring conventional residential mortgages, 5 persons getting a home improvement loan, and 53 persons acquiring loans on personal, business, or chattel security. Of 100 average borrowers from savings and loan

tional banking associations and savings and loan associations in 1952 did not occupy any different position in terms of their activities and fiscal significance than they did historically. National banks generally made the same type of loans historically as they did in 1952, with the exception of the evolution of particular loan policies dictated by Congressional mandate. For example, national banks have traditionally loaned money on the security of real estate, including residential properties, since 1916. However, the terms and conditions of such loan activity changed, as the conditions relating to the need of the bank for liquid funds changed, primarily through the increase of deposit money of less than demand nature (R. 818a-820a). The loan policies of both institutions, however, were changed by the direct action of the Federal Government in the home loan mortgage market by inauguration of the F.H.A. and V.A. programs. These changes in loan policy did not change the essential nature and character of either institution. Savings and loan associations were still left to operate almost exclusively in the home finance field, and national banking associations were still primarily discharging monetary functions with their loan activity more pronounced in the short-term loan field than in the residential mortgage market (R. 818a-823a, 854a, 855a).

This was true of the appellant bank and the associations in question, for the year 1952, as evidenced by the fact that their activities did not materially overlap.

In the last analysis, savings and loan associations *cannot* be in "substantial competition with the business of na-

associations in Michigan in 1952, 19 persons were acquiring F.H.A. and V.A. loans, 81 persons were acquiring conventional residential mortgages, and there were no borrowers on personal or chattel security or commercial real estate.

national banks" because they cannot and do not engage sufficiently in the activities characteristically carried on by the national banks. Stated another way, if they are not comparable institutions in substance, how can they be in substantial competition? [176]

6.

MISCELLANEOUS CONSIDERATIONS

A. A SAVINGS AND LOAN SHAREHOLDER IS NOT A STOCKHOLDER.

The appellant rests its entire argument on the premise that a savings and loan association share is the same as a share of stock in a commercial corporation such as a national bank. To prove this, appellant refers to arbitrary concepts and inappropriate terminology. In substance, a share of national bank stock is not analogous or comparable to a savings share account in a mutual savings and loan association. Professor Woodworth concluded that it was completely absurd to compare the two for tax purposes

[176]

This conclusion is not at variance with the *Hartford* case, *supra*, (which is comparable to the *Boyer* case, *supra*), since in *Hartford* the exemptions were so broad that the institutions exempted *collectively* could compete with the substantial business of national banks. In fact, such an interpretation of "substantial competition" indicates that partial exemptions are justified as a matter of law because these exemptions (however large in amount) are not discriminatory or hostile and do not interfere with the business of banking. On the other hand, hostile exemptions as in the *Boyer* and *Hartford* cases, *supra*, are not permissible because collectively (a measure of quantity) they can disrupt and interfere with the business of national banks and because, *qualitatively*, the exempt institutions carry on most of the phases and activities of the business of national banks.

and specifically noted the following differences between a savings share account and a share of national bank stock (R. 849a-851a).

"Savings share accounts are unlike shares of national bank stock in that they represent a small personal indirect investment in the mortgage portfolio and other assets of a savings and loan association with no prospect of appreciation in value of the principal.

"In contrast, shares of national bank stock represent a risk-taking venture, motivated by the expectation of making a business profit. If successful, the owner of the national bank shares may realize not only current cash dividends, but large appreciation in value per share.

"For example, the investor who bought 100 shares of stock in the Michigan National Bank in 1941 for \$1,700, as noted, according to the record, at \$17 per share, received a cash dividend in each year through 1952.

"In addition, he received 2.33 shares of stock dividends during this period, so that he had 333 shares in 1952. These shares were quoted at \$34 to \$36 a share in 1952, so that using \$35 as the mean of those two figures, the value of the principal had risen from \$1,700 to about \$11,655, an appreciation of \$9,955 or 586 per cent.

"Q. Contrast this with a savings and loan share account investment.

"A. Right along a little further, this example that I have just cited of large appreciation in the value of

national bank shares suggests another difference between these shares and savings share accounts.

"The large increase in net profit per share of Michigan National Bank was possible because for each dollar of capital stock, surplus, and undivided profits the bank had approximately \$20 of assets, the bulk of which was represented by debt to depositors.

"This is what is often called 'trading on the equity.'

"Savings share accounts cannot be used to trade on the equity in this manner. At the end of 1952, total savings share accounts were 84.7 per cent of total assets of all savings and loan associations in the United States, as shown by Exhibit 224.

"On the same date, the proportion of capital stock, surplus, and undivided profits to total assets of all national banks was 6.4 per cent, and this proportion in Michigan National Bank was 4.8 [Pl. Ex. 3; R. 529a, 931a indicates this figure is 4.2%] per cent.

"And third, I would point out that savings accounts or share accounts of savings and loan associations are unlike shares of national bank stock in that these accounts are always open to receive small additional amounts from savings customers and the associations stand ready to return these dollars and no more to customers on request on thirty days' notice, and usually on demand, in fact. This permits the general public always to participate on equal terms with existing share account holders.

"Not so with shares of a national bank. The number of such shares is fixed for long periods, and is changed only after formal approval by a vote of the stock-

holders. The owner of national bank shares cannot turn them in to the bank for redemption at a fixed value. He can convert them into cash only by sale, usually through a security dealer, in the over-the-counter market, such shares not being listed on organized stock exchanges.

"In contrast again, savings share accounts are not bought and sold in the market at varying prices. The amount and value in one's account remains the same except as increased by additions from savings or as reduced by withdrawals, except in the unlikely contingency of liquidation of a solvent association.

"Fourth, most savings and loan share accounts are insured by the Federal Savings and Loan Insurance Corporation. Unlike this, national bank shares of stock are not insured; in fact, were subject to double liability up to July 1, 1937, following an amendment to the National Bank Act in 1935. It is the deposits of national banks that are insured by the Federal Deposit Insurance Corporation.

"Thus, the basic comparability of savings share accounts and deposits which I have just established were recognized by Congress in its legislation to protect owners of savings share accounts and owners of deposits."

Other significant characteristics of savings shares that distinguish them from bank stock may be noted:

1. Limitations exist on the voting privileges of any member, irrespective of the number of shares.

2. Voting privileges are given borrowers who have no real interest in the association except in that capacity.

3. A saver enters into a contractual relationship with the association, one privilege of which is the provision for withdrawal and the liability for penalties imposed by the association.

4. Savings accounts have a fixed dollar value withdrawable on demand.

5. The withdrawal price is limited to paid-in value plus earnings required by statute to be distributed as dividends.

B. THE HARTFORD CASE.

Appellant relies *exclusively* on the case of *Hartford*, *supra*, 273 U.S. 548 to support its argument in this cause. This case does not support the appellant's argument any more than the cases that the court relied upon for decision in the *Hartford* case, including the leading cases of *Mercantile National Bank v. New York*, *supra*, 121 U.S. 138, and *First National Bank of Guthrie Center v. Anderson*, *supra*, 269 U.S. 341.

A careful analysis of the *Hartford* decision, *supra*, amply demonstrates that it only applies principles well established since the *Mercantile* case, *supra*. The *Hartford* case, *supra*, is closely analogous to the case of *Boyer v. Boyer*, *supra*, 113 U.S. 689. It *supports* the cases allowing "partial exemptions" for public policy reasons and it does not establish any different test in determining discrimination or "substantial competition" than do the numerous other decisions referred to in this brief.

The conclusions reached by the court in the *Hartford* case, *supra*, must be gleaned from the language employed or the exact holding expressed.

Some of the salient facts in the *Hartford* case, *supra*, were as follows: Real estate firms located in the vicinity of plaintiff bank loaned \$250,000 to \$300,000 annually in the area, which afforded the same competition to the plaintiff as loans made by other banks. Said local condition existed throughout the state. Also, various individuals, co-partnerships and corporations in the vicinity of plaintiff engaged in the business of acquiring and selling notes, bonds, mortgages and securities and employed substantial capital in carrying on their business. Other individuals, co-partnerships and corporations located in Milwaukee and in Chicago, were engaged in the business of buying and selling securities both in the vicinity of plaintiff bank and elsewhere and employed capital for that purpose. The securities acquired and offered were those that could be handled by the plaintiff bank.

The court made no further reference to the character and nature of the other capital that was competing with the bank. It is a fact, however, that *all other moneyed capital*, existing and employed in Wisconsin, was assumed to be preferentially treated. Therefore, the national bank shares constituted the *only* moneyed capital subject to tax in Wisconsin. The exemption under the *Hartford* case, *supra*, therefore, was broader in scope than the exemption held to be invalid in *Boyer v. Boyer*, *supra*, and was broader than the across-the-board exemptions held invalid in other § 5219 share-tax cases.

It is to be noted that the court in the *Hartford* case, *supra*, relies upon

First National Bank v. Anderson, supra, 269 U.S. 341, and

Mercantile National Bank v. New York, supra, 121 U.S. 138.

In arriving at its decision, the Court states as follows, at pp 557-558:

“• • • No decision of this Court appears to have so-qualified § 5219 as to permit *discrimination in taxation in favor of moneyed capital such as is here contended for.* • • •” (Emphasis added)

First National Bank v. Hartford, supra, (1926) 273 U.S. 548.

is consistent with the *Mercantile National Bank* case, *supra*, which was cited extensively throughout the opinion. The court thus left undisturbed the principle that *partial exemption*, based upon public policy, is permissible.^[177] It strengthened and clarified this principle by *holding that a total exemption of all other moneyed capital in the guise of numerous specific partial exemptions*, constitutes a violation of § 5219. By thus singling out national bank shares for taxation, it could be said, borrowing the language of

[177].

The principle is consistently applied and followed in the decisions subsequent to *Mercantile, supra*. See *First National Bank of Shreveport v. Louisiana Tax Commission, supra*, (1933) 289 US 60; *Consolidated National Bank v. Pima County, supra*, 5 Ariz 142, 48 P 291; *Hoening v. Huntington National Bank, supra*, (1932) (CCA 6th Circuit) 59 Fed 2d 479, and especially *Merchants' National Bank of Glendive v. Dawson County, supra*, (1933) 93 Mont 310, 19 P 2d 892, decided in the light of the *Hartford* case, *supra*.

Clement National Bank v. Vermont, *supra*, 231 U.S. 120, 135, .

“ . . . that the measure adopted [Wisconsin bank share tax] is essentially inimical to national banks, frustrating the purpose of the national legislation, or impairing their efficiency as federal agencies. . . .”
[Bracketed material added]

The court, in the *Hartford* case, *supra*, stated at pp 560 and 561:

“ . . . a consideration of the entire course of judicial decision on this subject can leave no doubt that state legislation and taxing measures which by their necessary operation and effect *discriminate* against capital invested in national bank shares *in the manner described* are intended to be forbidden. . . .” (Emphasis added)

The Court found, at pp 557 and 558, that

“Competition may exist . . . *serious in character* and therefore well within the purpose of § 5219, even though the competition be with some but not all phases of the business of national banks. Section 5219 is not directed merely at discriminatory taxation which favors a *competing banking business*. . . . *With the great increase in investments by individuals and the growth of concerns engaged in particular phases of banking* . . . discrimination with respect to *capital thus used* could readily be carried to a point where the business of national banks would be seriously curtailed. . . .”
(Emphasis added)

The above-quoted language of the Court was in answer to the Wisconsin court's holding that § 5219 was not violated *unless such exempted institution was able to carry on a general banking business*. The Court noted that the holding of the Wisconsin court could defeat the purpose of § 5219 by complete exemption of all other moneyed capital, which collectively was employed in all phases of the banking business with the exception of receiving deposits which were restricted to banks. The Court was thus concerned with the *collective* competition which was "serious in character" and which might seriously curtail national banking business. *The exemption of "concerns engaged in particular phases of banking" though not engaged therein as competing banking businesses operating in all phases of such business, was a violation of § 5219 since the aggregate of the numerous exemptions was equivalent to a total exemption of all other moneyed capital.*

The *Hartford* case, *supra*, therefore, did not purport to make new and divergent law.^[178] It is analogous and comparable to *Boyer v. Boyer*, *supra*, and holds only that a complete exemption of other moneyed capital is too broad, that the partial exemption rule was not applicable to the facts of the case, and the "substantial competition" re-

[178]

As indicated by the Trial Court below (96a-97a):

"The Hartford case has already been discussed and as pointed out, while the state court specifically dealt with the effect of competition with building and loan associations, the Supreme Court based its decision on the basis of competition with real estate firms and individuals and did not mention the building and loan associations and did not discuss, much less overrule, the savings bank cases."

quirements (as previously developed by the case law) were properly supported.[179]

C. GAPS IN APPELLANT'S CASE.

The Court's attention is directed to the following unsubstantiated inferences and erroneous assumptions, among others, in appellant's brief:

(1) That F.H.A., V.A. and conventional loans were competitive with each other for the favor of both the borrower and the lender (Br 15, Footnote 27). This is in error because there is no proof that either the conventional loan properties or the conventional borrowers could qualify for F.H.A. or V.A. approved loans.

(2) That conventional loans made by savings and loan associations, which appellant bank could not have made because of the term and percentage of appraised value, are comparable and competitive with the loans which appellant bank could have made (Br 15, Footnote 27).

(3) That the average conventional loan, term and percentage of appraised value for three associations (PL Ex's 106, R. 914a, 1255a; 107, R. 914a, 1256a; 108, R.914a, 1257a)

[179]

The appellant also relies on the cases of *Commercial National Bank v. Custer County*, 275 US 502, and *First National Bank of Shreveport v. Louisiana Tax Commission*, 289 US 60. As to these cases [*Hartford, Custer and Shreveport*], the trial Court properly concluded (R. 100a) :

"I, therefore, find nothing in the decisions of the *Hartford, Custer and Shreveport* cases which justified the conclusion that the Supreme Court has departed from the established law announced in the savings bank cases and applied in the *Hubbard* and *Hoenig* cases * * * ."

are typical of the sixteen associations in question (Br 15, Footnote 27). This is completely unsupported.

(4) That there was competition *within* the meaning of § 5219 in the F.H.A. and V.A. fields. This statement is in error. These loans were government controlled, sponsored and insured. *The same types of public policy considerations that permit the preferential treatment of government securities* under § 5219 removes these mortgages from § 5219 competition. [180]

(5) That refinancing transactions evidence competition (Br 13). Quite to the contrary, such transactions establish that the savings and loan associations and appellant bank were engaged in *complementary* loan activity that served *different* needs.

(6) That the object and purpose of savings and loan associations entitling them to public policy consideration, can be swept aside by reference to alleged changes in the minute details of their operations and organization. This is contrary to the established case law.

(7) That savings banks and savings and loan associations in 1900 and before employed their capital in a quasi-charitable manner exclusively for the benefit of the poorer class to aid them in accumulating small deposits and building homes; that no other institutions, including national banks of that day, could perform either of these functions; and that these functions constitute the only "just reason"

[180]

See, for example, cases such as *Mercantile National Bank v. New York*, *supra*, 121 US 138, 161, 162; *People v. Commissioners*, *supra*, 71 US 244; and *Des Moines National Bank v. Fairweather*, *supra*, 263 US 103.

which could be assigned to support the claimed exemption rule of the pre-1900 United States Supreme Court cases (Br 66-76). There is *absolutely* nothing in the record of this cause to support this statement. The legislation creating these institutions is not so restricted or phrased.[181]

(8) That the modern shareholder (Br 71-73) and borrower (Br 74-76) of a savings and loan association is different from the shareholder and borrower of 1900. Again, there is *absolutely* no evidence to support this statement.

(9) That the difference in character of savings and loan associations and national banks does not justify the exemption from § 5219 of moneyed capital employed by them in competition with the business of national banks. Here, appellant places itself in the position of being able to determine public policy. It thus illustrates the basic fallacy in its case, i.e., that it can decide whether Congress and the Michigan legislature have the right to determine whether a "just reason" exists for the tax treatment in question.

(10) That the modern associations are no longer mutual (Br 74-76). All the proof is to the contrary (898a).

(11) That the manner in which modern savings and loan associations employ their capital is identical to the way modern national banks employ a large and substantial part of their capital (Br 77). The record clearly shows that the appellant loaned its *deposit* money—and not its *capital* account—in the real estate investment field.

[181]

The *Mercantile, Bank of Redemption*, and *Hoenig* records, *supra*, indicate that the nature of these institutions and their activities in 1952 were the same as in the periods involved in such cases.

CONCLUSION

This brief has been primarily directed to an analysis of the share tax cases interpreting and applying § 5219 in an effort to determine the validity of the state tax imposed by PA 1953, No. 9, on national bank shares.

It has been demonstrated that not a single case would support a finding that this share tax on national banks is violative of the prohibition contained in § 5219, irrespective of tax treatment accorded savings and loan associations in Michigan. PA 1953, No. 9, which imposed for the year 1952 a tax of 5-1/2 mills on bank shares, valued by the capital account of the bank, does not violate § 5219.

To the contrary, the cases have constantly affirmed the rule of *partial exemption* and, without exception, applied it to savings and loan associations. The leading case of

Mercantile National Bank v. New York, *supra*, 121 U.S. 138,

approved and quoted at length by all subsequent decisions interpreting the share tax portion of § 5219, applied the rule of partial exemption to mutual savings banks, and

Mercantile National Bank v. Hubbard, *supra*, (1899) 98 F. 465,

applied the rule to savings and loan associations.

As an explanation of, and in support of, this rule of *partial exemption* in its application to mutual thrift institutions, the courts have uniformly made reference to two things, i.e., first, the *public policy* basis of the rule of *partial exemption*; and, second, the noncomparable, non-

competitive character of these institutions when contrasted with national banking associations.

This particular treatment of ~~savings~~ and loan associations and mutual savings banks is well founded in public policy areas other than those dealing with taxes. This is clearly evidenced by Congress' participation in the creation and fostering of these institutions (both state and federal) and its continued participation and involvement in the home-ownership field.

The appellees offered the trial court expert testimony and carefully drawn exhibits to show that the economic burden imposed on these two institutions by the state of Michigan is substantially identical. By any sound comparison, *there is no detriment to the plaintiff banks, its business or stockholders*, which operates in a discriminatory or harmful manner. The appellant has produced no witness nor any exhibit to prove the fact of alleged discrimination; it has rested its case solely on the automatic application of the "rate" of taxation. The cases decided under § 5219 do not require this Court to be blind to the economic realities of a tax.

It is respectfully submitted that, as a matter of law, the following conclusions are required:

(1) Savings and loan associations are entitled to exemption or preferential treatment under the partial-exemption rule.

(2) Savings and loan associations cannot be deemed in "substantial competition" with the business of national banks within the meaning of § 5219 because such associations operate in a field too narrow and restricted and are

too different in character, purpose and organization to be in such competition with national banking associations.

(3) The legislative history of Congress in creating the National Banking System and other financial institutions, including federal savings and loan associations, manifests a congressional intent to treat savings and loan associations, both state and federal, as distinctly different institutions from national banks for taxation purposes. This is also affirmed by its own tax treatment of savings and loan associations.

Additionally, the evidence in this case supports the following factual conclusions which would, alone, dispose of this case:

(1) There is no showing that the money employed by savings and loan associations in Michigan or in appellant's "competitive" area in 1952 is a substantial part of the total moneyed capital employed in such localities.

(2) The savings and loan associations in question were not in "substantial competition" with the business of appellant bank because of limited and restricted competition within the narrow and well-defined field of home financing, further restricted by the specialization of each type of institution in particular mortgage activities.

(3) The Michigan tax system does not subject national bank stock to hostile or unfriendly discrimination as compared to the tax imposed upon savings share accounts. It does not impose a greater tax burden on national banks than it does on savings and loan associations. Michigan's tax system has subjected economic and competitive equivalents to tantamount exactions for defraying the cost of government.

The concluding remarks of the Michigan Supreme Court (R. 1358, 1359) read as follows:

The record in this appeal discloses that Michigan building and loan associations operated in a narrow, restricted field, are markedly different in character, purpose and organization from national banks, and are not in "substantial competition" with national banks.

The record establishes that there was practical equality of the total tax imposed upon building and loan associations and upon national banks, and any difference would be justified as partial exemptions under the decisions of the supreme court of the United States quoted above. The restriction contained in RS § 5219 has to do with the actual incidents and practical burden of the tax imposed. (See *People v. Weaver*, 100 U.S. 539 [25 L ed 705].)

Appellant, as a taxpayer claiming immunity from the tax, had the burden of establishing its right to the exemption. There is no presumption of unlawful discrimination or that Michigan PA 1953, No. 9, imposed a tax "at a greater rate than [was] assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks." To meet this test, appellant had to introduce proof that was "manifest." (See *Hepburn v. School Directors*, 23 Wall, [90 U.S.] 480 [23 L. ed 112], and *Norton Company v. Department of Revenue of Illinois*, 340 U.S. 534 [71 S. Ct. 377, 95 L. ed 517].) Plaintiff filed to meet this burden of proof.

We reiterate and approve the finding of the trial court:

"That Michigan's tax treatment of savings/building and loan associations is based upon just cause and does not evidence an intent to create or foster a hostile or unfriendly discrimination against national banks."

RELIEF

It is respectfully submitted that this Court affirm the judgment of no cause of action of the Supreme Court of Michigan (R. 1359) of February 25, 1960, in favor of the appellees and against the appellant.

Respectfully submitted,

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The Capitol, Lansing, Michigan

ADDENDUM A

HOENIG EXTRACTS

**TESTIMONY BEFORE THE SPECIAL MASTER,
ON NOVEMBER 28, 1927.**

Testimony of Baldwin Gwinn Huntington

[107R] * * * I am Vice-President of the Huntington National Bank of Columbus, Ohio. * * * [108R] * * *

* * *

I am moderately familiar with the practices of building and loan associations in Columbus. They are in very much the same business that the banks are. They receive deposits; they allow interest on moneys that the public may leave with them as the banks do; they lend moneys to the individuals or to the public as the banks do; they exercise such other functions as renting deposit boxes; they purchase bonds in the market, banks do the [109R] same; they make real estate mortgage loans, banks do the same.

* * * I understand that building associations do not confine their loans to those who are stockholders in the association and that they receive deposits from the general public—any one who comes in with money to deposit. With respect to how they are housed, they vary greatly in that matter but the larger associations in Columbus all have what they call fine bank buildings. * * * I think there are two just across the street from each other that are just about the same size and some five or ten stories in height. * * *

* * * [110R] * * *

Building associations in Columbus do not confine themselves to loans on homes. I am not familiar with their country loans, but they do loan on downtown commercial buildings. I know of one instance of a construction loan that has run over \$300,000. on North High Street and it is about to be completed. I think the contract is for \$330,000. That is a commercial building with store rooms and I believe for hotel purposes above.

• • •

Testimony of Frank L. Stein

[115R] I have been president of The Ohio National Bank of Columbus for eight years. • • • We sometimes loan upon mortgages as collateral security. I would say probably as high as 10 per cent of our loans are made either upon mortgages as collateral securities or upon mortgages direct, the same effect as far as the borrower is concerned. • • •

Testimony of Leslie P. McCullough

[123R] I am and have been president of the Buckeye State Building and Loan Company for about three and one-half years. • • •

• • • [126R] • • •

• • • Our depositors are accorded the privilege generally speaking of making withdrawals at any time. Though we have the right to do so, we have never up to this time felt it necessary to suspend that privilege. We advertise that as one of the beneficent features of our institution. I do not know that that is an important factor in the successful conduct of a building and loan association. I do regard it of sufficient importance to advertise it constantly. We

loan money on real estate—improved property for the most part. Oftentimes there are tracts, farm property of which much of it is not improved. There is a house, a great portion of it is not improved. I do not know what you term “improved property”. We have loaned on vacant lots. We do not loan on tracts of land that are undergoing development and making streets. We loan on business property and on property that would be in the commercial or business area of the city—on any good substantially improved type of property that we regard as ample security to protect the funds that we let the borrower have.

• • • [128] • • •

• • • We operate a safe deposit box department and rent safe deposit boxes to the general public. We have a regular business room. I do not know whether you would call it handsome or not. • • • We are located in the heart of the business district of Columbus. We are erecting a new building fifteen stories high. • • •

Testimony of Edwin F. Wood

[135R] • • • I am secretary of the Ohio State Savings Association, a corporation organized under the building association laws of this State. • • •

• • • [137R] • • •

• • • It is for other people to say whether our building is handsome or [138R] not. • • • We lend money on homes and apartments. • • • We have a very few so-called straight loans. The majority of loans made by our company are in real estate security. • • • We would renew a straight loan at maturity if the security was still good and the loan had not been repaid.

Testimony of John Zuber

[139R] * * * I am Secretary of the Franklin Loan and Savings Company. * * * We consider that each borrower signs for a share and pay just a partial amount, \$1.00. We do not require borrowers to pay more but some do pay more. When the loan terminates, we give them the privilege of cashing it or in cancelling it with us. * * *

Testimony of L. H. Godman

[151R] I am secretary of the Adelphi Building, Loan and Savings Company, * * *. This institution receives deposits from people who are not its stockholders. It has received deposits of public funds from the City of Columbus. * * *

Testimony of Harley D. Culp

[152R] I am connected with the Hilltop Building and Loan Association, * * *.

* * * Each borrower had subscribed for one share of stock of the par value of \$100.00. We did not require them to pay the whole \$100.00 in. We required them to pay \$1.00 on their subscription and when they paid out the loan, we gave them credit for it, or returned the \$1.00 in cash with dividends at 6 per cent. * * *

Testimony of W. L. Van Sickle

[153R] I am engaged in the building and loan business in connection with The Columbian Building and Loan Company. * * *

* * * [157R] * * *

• • • When we had surplus funds, we loan on other classes of property, and have no limit as to the amount of loan we make on business property. We always give first preference to home builders and second to home buyers. The other classes on which we loan are apartments, sometimes on business properties, but we have very few loans on business property. We have loaned \$100,000., \$200,000. and once or twice \$300,000. I do not think we ever made any loans at \$400,000. • • •

• • • [159R] • • •

We advertise our institutions in the daily press for the purpose of increasing the volume of business.

Testimony of F. W. Robinson

[161R] I am secretary of The Equity Savings & Loan Company of Cleveland, Ohio. • • •

• • • [165R] • • •

As to our loans, while they are amortized loans these people often do come in and pay them off ahead of time; we give them the privilege of paying the loan at any time after a year, that is right in the note and mortgage. As to the average length of time that our loans run, if it was not for the banks they would run quite a time, but they take so many of them off they do not get very old. We make some construction loans and when we get them in nice shape they offer them some inducement and away they go. The bank sends us a check paying our loan off and takes the mortgage over. They no doubt take a new mortgage. • • •

Testimony of H. C. Gockenbach



[182R] * * * I am secretary of The Dollar Building and Loan Company of Columbus, * * *. [183R] * * *

We have solicited the deposit of funds through advertisements in the daily papers to build our business up. We circularize to a certain extent. In one of our letters, we say, "Look over your checking account and if it is more than your immediate needs, why not open a five per cent saving account with us?" * * *

Testimony of James M. McKay

[187R] * * * I am president of The Home Savings and Loan Company, Youngstown, * * *.

* * * The borrowing stockholder is only required to pay a nominal amount so as to keep the account open. A great many pay \$1.00, some pay \$5.00, some pay \$10.00, and some pay \$100.00. * * *

* * * [191R] * * *

The item "Real Estate, office building \$1,288,000.00" represents the building that our association occupies. We operate a safety deposit department. We have around 50,000 depositors. * * *

* * *

* * * We have Christmas Clubs. * * *

Testimony of Daniel C. Funk

[194R] * * * I am attorney for The Wayne Building and Loan Company of Wooster * * * [196R] * * * I think we have some money from more than two-thirds of the states

in the Union and from some foreign countries. * * * There are four building and loan companies in the country, three being of large size, * * *

Testimony of A. G. Welsh

[201R] I am secretary of The Federal Savings and Loan Company of Youngstown, Ohio, * * *

[202R] * * * One share is the minimum amount that a borrower must hold. The par value is \$100.00. He must pay \$2.00 upon that share to qualify as a borrower. He is not required to keep up the installments. * * *

We take deposits from any one who wishes to make a deposit. * * *

* * * [204R] * * *

The booklet which contains our financial statement of June 1, 1927 is a part of our advertising material and is distributed by our association. The following statement appears on page 4 of that booklet: "In fact more and more people are investing their money in a savings account or certificates of deposit at five and one-half per cent interest in preference to buying securities because an account with this Company not only affords the absolute safety desired by the investor but also provides a substantial income and at the same time has the money available at the time it is needed."

Testimony of George A. Archer

[216R] I am president of The Commercial National Bank of Columbus, Ohio. * * *

• • • [217R] • • •

Our bank advertises for deposits in the newspapers and folders and the usual bank advertising. We have our list that we usually follow up each month, mailing list. The building and loan associations advertise similarly. • • •

• • •

[218R]. • • • We do make loans on real estate mortgages made directly to our bank; also on real estate mortgages when presented to our bank as collateral security by the holders of the same. We make loans on the faith and credit of real estate as disclosed in the financial statements of borrowers from whom no specific mortgages are taken. As to the percentage of such loans, most of our loans, where we get a property statement, are backed by real estate principally. Our loans are made on the faith and credit of this real estate.

• • • [219R] • • •

The building associations receive deposits and make loans. They pay a much higher rate of interest, which makes it nearly impossible for us to do anything in our savings department. The fact that the national banks are required to pay taxes has a certain bearing upon the rate of interest which those banks can afford to pay upon savings. • • •

Testimony of Charles H. Mylander on recall

• • • [230R] • • •

• • • If a man had a home that was worth \$10,000. and he wanted to borrow \$5,000. on it to use in his business,

he could go to a bank or he could go to a building and loan association or to a mortgage company, either one. The [231R] volume of transactions of that character made by national banks has always been large in rural districts. It is growing larger each year in the cities. . . .

Testimony of G. W. Crossen

[244R] . . . I have been employed by the Fairfield National Bank. . . . [245R] . . . The banks in my district — all had a right to hold real estate mortgage loans . . . They could take loans on improved farm land for a period of five years, loans on city property for a period of one year up until this new law was enacted or the amendment to the Federal Reserve Act, then they cou'ld make a loan on improved city property for five years. . . . With reference to the one year loans on city property . . . , some of the banks had what they call a renewal clause in their mortgage which permitted them to renew the mortgage at the end of that year, . . . [355R-336R]

EXHIBIT 30.

American Loan & Savings Association.
American Savings Building—Main at Third.
Dayton, Ohio.

July 20, 1927.

Dear Sir:

As an officer of your association, we thought you might be interested in the opportunity this association offers for

the investment at good interest of your temporarily idle funds, or of funds which you would like to put where they will be quickly accessible in case of emergency.

We have a number of associations scattered over the State which use this association in this way, for their accommodation and ours. It is a favor to us for while our deposits are increasing more rapidly than those of any other of Dayton's twenty good associations, we have been able to readily place on first mortgages in this County, all of our available funds—and all at 7% interest.

Because we carry many large deposits of this kind, from other associations, banks and private individuals and firms—ranging in amount up as high as a quarter of a million dollars—we aim to keep ourselves prepared, at all times, to meet all withdrawals on demand, and without notice, however large the amount or whatever the prevailing conditions.

We carry accounts with Dayton's two largest banks, with one of which I am connected as a director and also with one of New York's largest banks. We always carry large balances and with the assistance of these banks, we believe we can meet any emergency.

While our usual rate on Temporary Certificates is 5%, we have been allowing other associations 6% on these certificates. While we cannot, of course, guarantee the continuance of this rate in the future, we will maintain it as long as we can loan our money at 7%.

If you would like to have some of your reserve where you can get it quickly and where it will earn good interest in the meanwhile, we shall be glad to receive it. We loaned Five Million Dollars in the first half of this year, and

believe we can make ready use of more money. Our total receipts in the six months were over Eleven Million Dollars.

Very truly yours,

F. M. Compton,
President and Manager.

FMC:JMcKJ

ADDENDUM B

Pertinent Provisions of Taxing Statutes

INTANGIBLES TAX ACT

[Act No. 301, Mich. Pub. Acts 1939,
as amended by Act No. 9, Mich. Pub. Acts 1953]

[Mich. Comp. Laws § 205.131, et seq.;
Mich. Stat. Ann (Henderson) § 7.556(1), et seq.].

• • •

Sec. 2. (a) For the calendar year 1952, and for each year thereafter or portion thereof there is hereby levied upon each resident or non-resident owner of intangible personal property not hereinafter exempted having a situs within this state, and there shall be collected from such owner an annual specific tax on the privilege of ownership of each item of such property owned by him. Regardless of situs, the ownership of shares of stock in banks, trust companies and national banking associations shall be taxed as provided in section 5219 of the revised statutes of the

United States with respect to shares of stock in national banking associations. Except as hereinafter provided the tax on income producing intangible personal property shall be $3\frac{1}{2}$ per cent of the income but in no event less than $\frac{1}{10}$ of 1 per cent of the face or par value of each item (or in the case of corporate stock or other evidence of corporate ownership having no par or face value, of the average per share contribution to capital, surplus and other funds in consideration of which all of the then outstanding shares of stock of the same class of such corporation shall have been issued): Provided, That income producing accounts and notes receivable owned by any taxpayer doing business at retail, arising out of the sale of goods and services at retail by such taxpayer, and with respect to which the income does not exceed the cost of carrying such receivables, shall be deemed to be non-income producing accounts and notes receivable. Except as hereinafter provided the tax on non-income producing intangible personal property shall be $\frac{1}{10}$ of 1 per cent of said face, par or contributed value. The tax on moneys on hand or in transit or on deposit in a bank shall be $\frac{1}{25}$ of 1 per cent of the face value thereof and the tax on shares of stock in building and loan or savings and loan associations shall be $\frac{1}{25}$ of 1 per cent of the paid-in value of such shares.

(b) The tax on that portion of income producing accounts and notes receivable offset by the deduction of accounts and notes payable in accordance with section 3 of this act shall be $\frac{1}{25}$ of 1 per cent of the amount of the total income producing receivables so offset.

• • •

(e) Intangible personal property subject to tax under this act or expressly exempt from the tax hereunder shall

be exempt from all general property taxes under the laws of this state.

Sec. 2a. For the calendar year 1952, in lieu of the tax imposed by this section prior to this amendatory act, and for each year thereafter, or a portion thereof, there is hereby levied upon each resident or nonresident owner of shares of stock of national banking associations located in this state and banks and trust companies organized under the laws of this state, and there shall be collected from each such owner an annual specific tax on the privilege of ownership of each such share of stock, whether or not it is income producing, equal in the case of a share of common stock to $5\frac{1}{2}$ mills upon each dollar of the capital account of such association, bank or trust company represented by such share, and equal in the case of a share of preferred stock to $5\frac{1}{2}$ mills upon the par value of such share. "Capital account" as referred to herein shall be determined by adding the common capital, surplus and undivided profits accounts exactly as they appear on the report as of the latest date during the year for which the tax is imposed prepared by such association, bank or trust company for the public authority having general regulatory supervision over it, and the dollar amount of the capital account represented by each share of its common stock shall be determined by dividing such capital account by the number of shares of such common stock outstanding at the date of such report. The tax on such shares of stock levied under this section shall be the only tax levied with respect to shares of such associations, banks or trust companies.

The tax imposed by the provisions of this section 2a for the calendar year 1952 shall be due and payable on or before 45 days after the effective date of this section 2a

and that so imposed for each year thereafter shall be due and payable as provided for in section 4 of this act.

Notwithstanding anything to the contrary contained in any other provision of this act, the amount of all taxes paid by any such association, bank or trust company on behalf of its shareholders for the calendar year 1952 in accordance with any provision or provisions of this act in effect prior to the effective date of this section 2a shall be credited as a payment against the tax imposed on the shares of such association, bank or trust company for the calendar year 1952 under this section 2a.

Sec. 3: . . .

(b) The following shall be exempt from the tax imposed by this act:

(1) Mortgages and land contracts and the evidences of indebtedness secured thereby upon which the specific tax imposed by Act No. 91 of the Public Acts of 1911, as amended, being sections 3640 to 3640, inclusive, of the Compiled Laws of 1929, has been paid prior to the effective date of this act; or any debt or obligation which is secured by a mortgage upon such real estate as may be owned and occupied by library, armory, benevolent, charitable, educational and scientific institutions, incorporated under the laws of this state, with the buildings and other property thereon, while occupied by them solely for the purposes for which they were incorporated or secured by a mortgage upon any house of public worship with the land on which it stands, the furniture therein, or any parsonage owned by any regularly organized religious society of this state and occupied as such;

. . .

(3) Bonds or other similar obligations of the state of Michigan, or of any political subdivision thereof;

(4) Obligations of the United States, or guaranteed as to principal or interest by the United States, which are exempt from taxation by reason of act of congress. The term "United States" shall be construed to mean and include any possessions, agencies or instrumentalities of the United States;

(5) Bonds, mortgages and other certificates of indebtedness made and issued by any municipality, organization or private individual for the purpose of erecting armories in this state;

(6) Intangible personal property belonging to benevolent, charitable, religious, educational, and non-profit scientific institutions incorporated under the laws of this state: Provided, That such exemption shall ~~not~~ apply to secret or fraternal societies; but the intangible personal property of charitable homes of such societies shall be exempt;

...

(8) Pensions, including so-called "annuities" payable under old age, retirement or pension provisions of any public authority or private employer, irrespective of the source of contributions thereto: Provided, That said public authority or private employer shall have contributed 50 per cent or more of the cost of such old age, retirement or pension program; all intangible personal property comprising all or any part of the assets of stock bonus, pension or profit-sharing plans or trusts which qualify for exemption from federal income taxes under the internal revenue code; cash surrender values and loan values of insurance policies; annuities prior to the time when the

periodic payments thereunder shall actually commence, and royalties;

(9) Intangible personal property belonging to foreign insurance companies paying the specific tax under section 17 of chapter 2 of part 2 of Act No. 256 of the Public Acts of 1917, being section 512.17 of the Compiled Laws of 1948, as amended, annuity companies which provide a reserve to retire their certificates at, or prior to the time of maturity and domestic insurance companies, exempt or taxable under the provisions of Act No. 206 of the Public Acts of 1893, as last amended, being sections 211.1 to 211.157, inclusive, of the Compiled Laws of 1948;

• • •

(11) Intangible personal property belonging to banks, building and loan associations, savings and loan associations and trust companies doing business in this state under whatever authority organized;

• • •

(12a) Intangible personal property belonging to credit unions doing business in this state under whatever authority organized;

• • •

Sec. 3a. Notwithstanding any provision of this act to the contrary, the owner of a claim for money on deposit with a bank of any kind or savings in a building and loan and savings and loan association, engaged in the business of receiving moneys for deposit or savings subject to withdrawal by check or otherwise, shall be exempt from the tax imposed by this act on the ownership of such claim during

any calendar year in the event that such bank or building and loan or savings and loan association voluntarily elects, as hereinafter provided, to pay, in the manner provided for in this act, a tax for such year of $1/25$ of 1 per cent of that amount of the face value of its assets as is equal to the amount of its total deposit liabilities, or in the case of building and loan or savings and loan associations the amount of its share liabilities, as of the close of business on December 31 of such year less the amount of all its deposit liabilities or share liabilities, as the case may be, on that date owing to the federal government or any agency or instrumentality thereof and to the state of Michigan and any political subdivision, instrumentality, and agency thereof. Any bank or association which elects to pay a tax as aforesaid for any year shall, on or before December 31 of each year commencing in 1945, file a written declaration of its voluntary election to do so with the department of revenue. The payment of such tax for any year by a bank or building and loan or savings and loan association shall not exempt it from liability for and payment of any other taxes validly imposed upon it under any other statute or statutes of this state.

• • •

Sec. 6. • • •

Any person engaged in the business of receiving moneys for deposit or savings subject to check or other withdrawal, who collects and pays the tax imposed upon the owner thereof under this act as required by this section but does not assume the payment thereof, shall be entitled to retain for the total amount of the taxes so collected by him for each year a sum of money equal to 3 per cent thereof as compensation for services rendered in acting as the agent of the department in collecting and paying

such tax. The tax on shares of stock of state and national banks and trust companies located in Michigan shall be paid by said bank or trust company on behalf of its shareholders and the tax so paid may be charged against the shareholders for whom the tax was paid. • • •

GENERAL CORPORATION LAWS

[Act No. 85, Mich. Pub. Acts 1921,
as amended by Act No. 183, Mich. Pub. Acts 1952]

[Mich. Comp. Laws § 450.301, et seq.;
Mich. Stat. Ann. (Henderson) § 21.201, et seq.]

Sec. 3. Every cooperative association and every domestic corporation hereafter organized for profit, and every foreign corporation for profit hereafter applying for admission to do business within this state, shall at the time of filing its articles or applying for admission, as the case may be, pay to the Michigan corporation and securities commission, as an organization fee and for the privilege of exercising its franchises within this state, a sum equal to $\frac{1}{2}$ mill upon the dollar for each dollar of the authorized capital stock of such corporation: Provided, That in case of a foreign corporation, such fee shall be computed upon that portion of its authorized capital stock represented by the portion of its property, both tangible and intangible, owned and/or used or to be used and business transacted in Michigan: And provided further, That in no case either as to a domestic or foreign corporation shall the organiza-

tion fee be less than \$25.00: And provided further, That every corporation heretofore or hereafter incorporated under the laws of the state of Michigan which shall thereafter increase its authorized capital stock, and every foreign corporation heretofore or hereafter admitted to do business in this state, which shall thereafter increase its authorized capital stock, shall pay a sum equal to $\frac{1}{2}$ mill upon each dollar for each and any increase in its authorized capital stock: And provided further, That in case of a foreign corporation, such fee shall be computed upon that portion of its authorized capital stock represented by the portion of its property, both tangible and intangible, owned and/or used or to be used and business transacted in Michigan: And provided further, That whenever a foreign corporation which has heretofore or hereafter been admitted to do business in Michigan shall increase the proportion of its authorized capital stock represented by property owned and/or used and business transacted in this state, it shall pay a sum equal to $\frac{1}{2}$ mill upon each dollar of the increased proportion of its authorized capital stock represented by its property, both tangible and intangible, owned and/or used and business transacted in Michigan: And provided further, That in determining the amount or value of intangible property, including capital investments, owned or used in this state by a foreign corporation, such property shall be considered to be located, owned or used in this state for the purposes hereof, if used in or acquired from the conduct of its business in this state, irrespective of the domicile of the corporation. The Michigan corporation and securities commission shall in all such cases be authorized to require the corporation to furnish detailed and exact information touching such several matters before making a final determination of the organization fee to be paid by such corporation: Provided, That the Michigan corporation and securities commission

in determining the organization fee under this section shall work in conjunction with the state department of revenue: And provided further, That the rate of fees herein provided for, when applied to corporations organized under Act No. 50 of the Public Acts of 1887, as amended, being sections 489.1 to 489.40, inclusive, of the Compiled Laws of 1948, and generally known as "building and loan associations", shall be 1/10 mill. The term "corporation" as used in this act shall be deemed to include partnership associations, limited, cooperative associations, all joint associations having any of the powers of corporations, and such common law trusts or trusts created by statute of this or any other state or country exercising common law powers in the nature of corporations, whether domestic or foreign, in addition to such other corporations as are referred to in this act. All corporations whose terms of corporate existence shall have expired, or shall be about to expire by limitation, and who shall seek to extend or renew such corporate existence, in accordance with law, shall be regarded as new corporations for the purpose of the payment of the fees provided by this act, and shall be required to pay such fees before the extension or renewal of such corporate existence.

...

Sec. 4. Every cooperative association and every profit corporation organized or doing business under the laws of this state, or having the privilege to do business, employing capital or persons, owning or managing property or maintaining an office, or engaging in any transaction, in this state, excepting domestic and foreign insurance companies, medical care corporations, hospital service corporations, state and national banking corporations, trust companies, and such corporations now in existence or hereinafter incorporated formed with the consent of the banking

commissioner for the state of Michigan for the purpose of taking over all or a part of the assets of closed banks or trust companies with the intent and purpose of liquidating such assets when and as conditions warrant such action by said corporations, shall pay, at the time of filing the annual report with the Michigan corporation and securities commission, as required by sections 81 and 82 of Act No. 327 of the Public Acts of 1931, being sections 450.81 and 450.82 of the Compiled Laws of 1948, an annual fee of 4 mills upon each dollar of its paid-up capital and surplus, but such franchise fee shall in no case be less than \$10.00: Provided, That operating railroad, interurban railroad, telephone, telegraph and express companies heretofore exempt from this franchise tax shall be exempt as to the franchise tax payable in 1953 and thereafter unless the state board of assessors has certified prior thereto to the Michigan corporation and securities commission that the specific tax rate under Act No. 282 of the Public Acts of 1905, as amended, being sections 207.1 to 207.21, inclusive, of the Compiled Laws of 1948, has been based upon state equalized valuation. It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, having the privilege of exercising corporate franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period. The Michigan corporation and securities commission shall in all such cases be authorized to require the corporation to furnish detailed and exact information touching such several matters before making a final determination of the privilege fee to be paid by such corporation. For the purpose of this act only, each share of no par value shall be deemed to have the value of at least \$1.00, or such value as shall have been fixed by the corporation for the sale of such stock, or the book value as determined by the Michigan corporation and

securities commission, whichever may be the higher. In any case where the capital of a corporation is not divided into shares, the whole property thereof shall be deemed to be the authorized capital stock for the purposes of this act.

The term "surplus", as used in this act, shall be taken and deemed to mean the net value of the corporation's property, less its outstanding indebtedness and paid-up capital; but in no case, either as to domestic or as to foreign corporations, shall any deduction be made from the item of paid-up capital, in computing the franchise fee thereon, by reason of any impairment of the same.

Sec. 4a. Every building and loan association organized or doing business under the laws of this state shall at the time of filing its annual report as required by section 5 of chapter 2 of part 5 of Act No. 84 of the Public Acts of 1921, for the privilege of exercising its franchise and of transacting its business within this state, pay to the secretary of state an annual fee of $\frac{1}{4}$ mill upon each dollar of its paid-in capital and legal reserve,

Sec. 4b. Every cooperative association and every profit corporation organized or doing business under the laws of this state, having the privilege to do business, employing capital or persons, owning or managing property or maintaining an office, or engaging in any transaction, in this state, principally engaged in the development of mines and mining of iron, copper, silver and other mineral ores within this state, shall at the time of filing its annual report with the Michigan corporation and securities commission, as required by sections 81 and 82 of Act No. 327 of the Public Acts of 1931, being sections 450.81 and 450.82 of the Compiled Laws of 1948, pay an annual fee of 4 mills upon each dollar of the fair average value of its issued capital stock for the preceding year ending June

30th. In estimating the value of capital stock, the surplus and undivided profits shall be included but such fee shall in no case be less than \$10.00.

Sec. 5. In the case of computing the annual franchise fee prescribed by section 4 of this act, both as to domestic and foreign corporations, such computations shall be made by the Michigan corporation and securities commission, working in conjunction with the state department of revenue, upon the entire paid-up capital and surplus of any corporation which does not maintain a regular place of business outside this state other than a statutory office.

Sec. 5d. Any corporation at least 90 per cent of whose assets consist of intangible personal property or at least 90 per cent of whose gross income consists of interest and dividends, gross profits from trading in intangible personal property, or commissions or other compensation for financial services, shall be deemed for the purposes of this act to be engaged in financial business. The annual franchise fee of any such corporation shall be measured by that portion of its paid-up capital and surplus as its gross business in this state is to its gross business everywhere during the period covered by its report determined as the sum of:

(1) Fees, commissions or other compensation for financial services rendered within this state;

(2) Gross profits from trading in stocks, bonds or other securities managed within this state;

(3) Interest and dividends received within this state;

(4) Interest charged to customers, at places of business maintained within this state, for carrying debit

balances of margin accounts, without deduction of any costs incurred in carrying such accounts; and

(5) Any other gross income resulting from the operation of financial business within this state; divided by the aggregate amount of such items of the taxpayer everywhere.

Sec. 5e. If it shall appear on the application of the taxpayer or otherwise that an allocation factor determined pursuant to this act does not properly reflect the activity, business, receipts and capital of a taxpayer reasonably attributable to the state, the commission shall adjust it by:

(1) Excluding 1 or more of the factors or any component thereof.

(2) Including 1 or more other factors, such as expenses, purchases, contract values (minus subcontract values);

(3) Excluding proportionately 1 or more asset items in computing entire paid-up capital and surplus; or

(4) Applying any other similar method calculated to effect a fair and proper allocation according to the receipts, activity, business and capital reasonably attributable to this state.

The commission shall promptly publish its rulings with respect to any application of the provisions of this section. Such rulings shall be promulgated in conjunction with the state department of revenue.

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APPELLANT'S BRIEF

FILED

DEC 17 1960

JAMES H. BROWNING, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE, THE FIRST
NATIONAL BANK (THREE RIVERS, MICHIGAN),
COMMERCIAL NATIONAL BANK OF IRON MOUNTAIN,
THE NATIONAL BANK OF JACKSON, and THE FIRST
NATIONAL BANK AND TRUST COMPANY OF
KALAMAZOO, banking associations organized under
the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and LOUIS M. NIMS,
STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

Statement and Brief of Appellant, Michigan
National Bank, re Appellee's Objections to
Motion of Sixty-Eight Banks in Michigan for
Leave to File a Brief as Amici Curiae and
Brief Amici Curiae

Thomas G. Long
Victor W. Klein
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Harold A. Rugmenapp

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Detroit 26, Michigan

Attorneys for Appellant
Michigan National Bank

IN THE SUPREME COURT OF THE UNITED STATES

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Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

**Statement and Brief of Appellant, Michigan
National Bank, re Appellee's Objections to
Motion of Sixty-Eight Banks in Michigan for
Leave to File a Brief as Amici Curiae and
Brief Amici Curiae**

Appellee, in its Objections (p. 5), erroneously asserts that
"the participation of the sixty-eight banks as amici curiae
has been directly solicited by the Michigan National Bank
in an attempt to mislead this Court into believing that
the position taken by the Michigan Bankers Association as
expressed in paragraph 1 above is not representative of the
Michigan banks."

To the contrary Appellee is attempting "to mislead the Court into believing that the position taken by the Michigan Bankers Association" tax and executive committees represents the position of the banks in Michigan — notwithstanding

- (a) the action taken by these committees in 1953-4 was never voted upon nor authorized by the members of the Association,
- (b) members were not advised of the position taken by these committees until 1959—(five to six years thereafter),
- (c) The officers refused to submit the matter to the vote of the membership at the annual meeting of 1959, although requested by appellant so to do, and
- (d) over sixty banks, in their motion to file a brief amici, state that their position is directly contrary to that asserted by these committees of the Michigan Bankers Association.

In 1952, the Michigan Legislature imposed a tax upon banks which it concluded was unconstitutional as to national banks. (Appellee's Objections, p. 9, par. 1.)

Among other taxes then considered was the imposition of a special income tax on banks (Appellee's Objections, p. 20-1). The Tax Committee of the Michigan Bankers Association—without consulting with or obtaining approval of its members—denied the amendment to the Intangibles Tax Law (Act 9 of 1953) to be "more desirable in form than a special tax on income." (Appellee's Objections, p. 20.)

Accordingly, this committee made an "agreement" with the legislative committee; that Act 9 would be enacted, "on the assurance of the Association that we [it] would help the State defend any attack on the legality of the tax (Appellee's Objections, p. 15) . . . if the validity of the new tax was

questioned by any national bank^[1] . . ." (Appellee's Objections, p. 20.)

Members of the Association were not apprised of this "agreement" until 1959. (Appellee's Objections, p. 14.)

Appellant (and five intervenor national banks); contending that Act 9 was contrary to R. S. 5219, instituted the present action on December 7, 1953. The Executive Committee of the Association, carrying out the "agreement" of the tax committee, directed the appearance amicus of the Association on the side of the State before the trial court. (Appellee's Objections, pp. 10-11.)

It was not disclosed to the trial court, to appellant or to the members of the Association at that time that this appearance and the brief amicus subsequently filed were pursuant to the above "agreement." The Association counsel filed a brief amicus in the trial court, which brief did not state that it was on behalf of the members of the Association. The trial court, however, without any proof in the record (and there is none in fact), erroneously concluded that this brief was filed on behalf of the members and so stated, which statement was quoted in the opinion of the Michigan Supreme Court.

After the trial court decision, in view of the statement therein that the brief of the Association stated the position of the members, Appellant sought to have presented to the full membership of the Association for a vote the question of whether or not the position taken in the brief amicus

^[1]The validity of Act 9 as to national banks apparently was in doubt in the minds of the Michigan Legislature at the very time of its enactment.

* Certainly, a committee of the Bankers Association cannot bargain away important safeguards prohibiting tax discrimination by a state against national banks guaranteed by Congress under R.S. 5219.

before the trial court met with the approval or disapproval of the membership and correctly or incorrectly stated the position of the members.

Appellant's letter requesting an opportunity to be heard on this subject was delivered to the proper officers of the Association the day preceding the opening session of the June 19, 1959, annual meeting at Mackinac Island. Appellant was told by one of the officers that if such a request were made, Appellant would have a hearing before the full membership. Notwithstanding, the meeting was adjourned without recognizing Appellant and it was denied the opportunity to present its views to the full membership meeting on this subject which it deemed vital to all banks. (Stoddard affidavit attached hereto.)

Only thereafter, on July 2, 1959, for the first time did the Executive Manager of the Association "lay before the membership the . . . Association's position relative to the Intangibles Tax"—after its filing the brief amicus and the lower court's comment thereupon were accomplished facts. (Appellee's Objections, p. 14)

In this same bulletin the Association stated that "we feel that we had an obligation to the Michigan State Legislature (Appellee's Objections, p. 16) and (omitted from Appellee's Objections) further stated that "No one claims that the share tax is perfect . . . but it is to be preferred to an income tax."^[2] (See Stoddard affidavit attached)

Appellant contacted banks located in the vicinity of the cities in which it operated endeavoring to ascertain their position, i. e., whether or not they agreed with, approved or authorized the position stated in the brief amicus filed in

^[2]This bulletin of the Association recognized that "We appreciate that savings and loan associations are stiff competition, some of which may be due to favored tax treatment . . ." (Appellee's Objections, p. 16).

the court below by the committee of the Association on Act 9. When Appellant was told that the Association's position and the lower court's statement in respect thereto were not in accord with the position of a bank, Appellant, knowing that the Community National Bank of Pontiac^[3] and other banks in Michigan (with whom Community National was consulting) intended to ask leave to file a brief amicus correcting the misstatement of the court below, stated that such bank had the opportunity to join with Community National and other banks to present their position to this Court. Most of the banks contacted did join in the application of the Community National bank and other banks for leave to file a brief amicus. (See Stoddard affidavit attached.)

From the foregoing it is clear that the membership of the Association never approved the statement of position contained in the brief amicus of the committee of the Association, and the comment of the lower court so stating is erroneous—and there is nothing in the record nor in Appellee's Objections which supports or permits of any other conclusion. Over sixty banks in Michigan in their motion to file a brief amicus expressly state that such position is directly contrary to their position.^[4]

Respectfully submitted,

Thomas G. Long

Victor W. Klein

Philip T. Van Zile, II

Harold A. Ruemenapp

Attorneys for Appellant

^[3]Community National Bank of Pontiac had contested the validity of Act 9 since its adoption in 1953.

^[4]The position of most of the other members of the Michigan Bankers Association has not been sought nor indicated.

**Affidavit of H. J. Stoddard, President
of Michigan National Bank, Appellant.**

State of Michigan }
County of Wayne } S.S.

H. J. Stoddard, being first duly sworn, deposes and says that:

(1) He is and for approximately 20 years has been President of Appellant Michigan National Bank.

(2) Michigan National Bank has been a member of the Michigan Bankers Association for approximately 20 years.

(3) As a member of said Association, Michigan National Bank was not consulted about nor did it authorize or approve the Association tax committee's position before the Michigan Legislature in respect to the adoption of Act 9 of P.A. of 1953, or as to any "assurance of the Association that . . . [it] would help the State defend any attack on the legality of the tax if the validity of the new tax was questioned by any national bank"—nor if consulted would have approved of waiving its right to the safeguards assured to national banks under R.S. 5219 against tax discrimination by the State favoring other moneyed capital invested in savings and loan associations competing with the business of national banks.

(4) Neither Michigan National Bank, as a member of the Association, until November 19, 1958, nor the membership as a whole until mid 1959 was apprised of the position taken by the tax or executive committee of the Association in respect to the Intangibles Tax, Act 9, or as set forth in the brief amicus filed by the Association in the trial court. The view therein expressed is contrary to Appellant's position, and affiant believes contrary to the position of most banks in the Association.

(5) When the trial court inferred that the Association brief expressed the views of the membership—rather than of a small committee of the Association—affiant, on behalf of Michigan National Bank, by letter dated June 8, 1959, directed to the presidents of all banks in Michigan, criticized the position taken by the Michigan Bankers Association in its brief amicus so that this would be before the membership when appellant expected to present the subject at the annual meeting on June 19 or 20, 1959.

The following written response directed to the Michigan Bankers Association, with copy to affiant and others, indicates that the position of the members was "at variance" with that stated by the committee of the Association in respect to Act 9:

THE FIRST NATIONAL BANK

Burr Oak, Michigan

June 15, 1959

Mr. Ralph M. Stickle, Executive Manager
Michigan Bankers Association
1502 Bank of Lansing Building
Lansing, Michigan

Subject: TAXES

Dear Ralph:

We are in receipt of a letter from Howard J. Stoddard, President of Michigan National Bank, advising in great detail of the disparity between the taxes paid by Banks and Savings & Loan Associations.

Mr. Stoddard is using a report prepared by the Michigan State Banking Department to show the present inequalities and this report further emphasizes the point that the present tax would increase the burden of Banks and decreases that of the Association; thereby granting them further competitive advantages.

The writer is quite aware of all of this from the many talks and papers presented at the various bank meetings. At all of those meetings the bankers were overwhelmingly in favor of equitable tax treatment.

What I do not understand is the reason for the resolution passed by our association, as quoted in Mr. Stoddard's letter, to the effect the association felt the present plan of taxation of Banks and Savings & Loans was eminently fair. This would appear to be at variance with everything the writer has ever heard or read on the subject at bank meetings or from bank publications.

The writer further understands that many of the larger banks have interlocking directors with the Savings and Loan Associations or else receive very substantial deposits from them and that these men fail to see anything wrong with the inequitable situation because of selfish monetary reasons. As a matter of principle, if any of these men are on the committees for the Michigan Bankers Association, they should stand up and be counted and disqualify themselves from voting or taking part in any discussion or matter where they serve two masters.

The writer would like to hear the Association's side of this story and perhaps it is worth covering at the forthcoming meeting, but in any event, we sincerely hope your office will unceasingly and vigorously fight for a more equitable tax treatment for your members.

With kind personal regards, I am

Sincerely,

J. E. Hickory, President

cc: H. J. Stoddard

Carlton H. Morris

Floyd E. Wagner

(6) Thereafter, on June 17, 1959, affiant, on behalf of Michigan National Bank, as a member, by letter directed to E. Davidson Potter, Vice President of the Michigan Bankers Association, and the incoming president who would preside at the annual meeting, submitted a resolution on the subject and requested the opportunity to present the same at the annual meeting of members on June 19 or 20, 1959, to ascertain by a vote of the members whether in effect the statement of the Association in the brief amicus was authorized and whether it was in accord with or contrary to the position of the members.

(7) Affiant was told that the letter had been received, that it was before the Executive Committee of the Association the day before the meeting, and that if affiant requested an opportunity to be heard at the meeting, he would be afforded such opportunity. Notwithstanding, on the last day of the meeting, when new business was to be considered, affiant, in the front row, sought recognition to discuss the question, but the presiding officer did not recognize him and hastily adjourned the meeting without affording the membership an opportunity to discuss and vote upon the question.

(8) Affiant, being advised by Community National Bank, that it and other banks it had consulted and was consulting, intended to file a motion for leave to file a brief amicus in this appeal, was told that any other banks in Michigan, so minded, would be welcome to join. Appellant endeavored to ascertain the position of other banks in the vicinity of the offices of appellant, i. e., whether or not they agreed with, approved or authorized the position stated in the brief amicus filed in the court below by the committee of the Association on Act 9. When Appellant was told that the Association's position and the lower court's statement in respect thereto were not in accord with the position of a bank, Appellant stated that such bank had the opportunity to join with Community National and other banks to present

their position to this Court correcting the misstatement of the court below. Most of the banks contacted did join in the application of the Community National Bank and other banks for leave to file a brief amicus.

(9) As a member of the Association, Michigan National Bank received a bulletin from the office of the Executive Manager of the Michigan Bankers Association dated July 2, 1959, quoted in part at length in appellee's objections, pages 14-18, which bulletin, among other things, stated that "no one claims that the share tax is perfect . . . but it is to be preferred to an income tax," which statement was omitted from the above Exhibit set forth in appellee's objections.

/s/ H. J. Stoddard

H. J. Stoddard

Subscribed and sworn to before me this
15th day of December, 1960.

/s/ Beatrice Cabanaw

Beatrice Cabanaw, Notary Public,
Wayne County, Michigan.

My commission expires February 7, 1961.

FILED

DEC 20 1960

JAMES B. BRYAN, CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (Three Rivers, Michigan),
COMMERCIAL NATIONAL BANK OF IRON
MOUNTAIN,

THE NATIONAL BANK OF JACKSON, and
THE FIRST NATIONAL BANK AND TRUST COMPANY,
OF KALAMAZOO,

banking associations organized under the laws of the
United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and

LOUIS M. NIMS, State Commissioner of Revenue,

Appellees

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

**RESPONSE OF MICHIGAN BANKS TO
APPELLEE'S OBJECTIONS TO MOTION
FOR LEAVE TO FILE A BRIEF
AMICI CURIAE**

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JAMES L. HOWLETT,

1001 Pontiac State Bank Building,
Pontiac, Michigan,

Attorneys for the Applicant
Michigan Banks.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

—◆—
No. 155
—◆—

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,
Appellant,

NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (Three Rivers, Michigan),
COMMERCIAL NATIONAL BANK OF IRON
MOUNTAIN,

THE NATIONAL BANK OF JACKSON, and
THE FIRST NATIONAL BANK AND TRUST COMPANY
OF KALAMAZOO,

banking associations organized under the laws of the
United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and

LOUIS M. NIMS, State Commissioner of Revenue,
Appellees

—◆—
ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN
—◆—

RESPONSE OF MICHIGAN BANKS TO
APPELLEE'S OBJECTIONS TO MOTION
FOR LEAVE TO FILE A BRIEF
AMICI CURIAE
—◆—

The undersigned Michigan banks, now fifty-seven (57) in number, file this response so that there may be no misapprehension as to their reasons for filing or joining in the motion and in answer to the inference suggested by those objections that the applicants, at least other than the Community National Bank of Pontiac, were not informed of and not aware of the position taken in said motion.

As appears from the affidavit hereto attached, each of said sixty-eight (68) banks which originally joined in the motion specifically requested that its name be included as a moving party and every one of said banks received a galley proof of the motion and proposed brief in advance of filing, and consequently was fully and fairly apprised of the position being taken on its behalf. Although suggestions or criticisms were invited, none were received.

In view of the statements made in footnote 84, page 33, of Appellee's main brief, we respectfully advise the Court that none of the fees of the undersigned counsel or the costs of printing their motion and proposed brief is being borne by Appellant.

It is respectfully submitted that the applicants' motion should be granted.

DEAN G. BEIER,
JAMES L. HOWLETT,

1001 Pontiac State Bank Building,
Pontiac, Michigan;
Attorneys for

Community National Bank of Pontiac
National Bank of Royal Oak
First National Bank, Quincy, Michigan
National Bank of Hastings

(List of Banks continued on next page)

Security National Bank of Manistee
 National Bank of Eaton Rapids
 First National Bank of East Lansing
 First National Bank of Mt. Clemens
 National Bank of Richmond
 First National Bank of Niles
 First National Bank, Sturgis, Michigan
 First National Bank, Cassopolis, Michigan
 Hillsdale County National Bank
 National Bank of Jackson
 Community National Bank of Ithaca
 First National Bank of Kalamazoo
 First National Bank of Three Rivers
 National Bank of Wyandotte
 Community State Bank, St. Charles, Michigan
 Commercial Savings Bank, St. Louis, Michigan
 Woodruff State Bank, DeWitt, Michigan
 Loan and Deposit State Bank,
 Grand Ledge, Michigan
 Peoples Sate Bank, Williamston, Michigan
 Peoples State Bank of Caro, Michigan
 Saginaw Valley Bank
 Capae State Savings Bank
 Howard City State Bank
 The Morley State Bank
 First State Bank of Greenville
 Wyoming State Bank, Wyoming Township,
 c/o Grand Rapids, Michigan
 Moline State Bank
 Calhoun State Bank, Homer, Michigan
 Delton State Bank
 The Grosvenor Savings Bank, Jonesville, Michigan
 Hillsdale State Savings Bank
 The Olivet State Bank
 Springport State Savings Bank
 Wayne Oakland Bank, Royal Oak, Michigan
 Clarkston State Bank
 State Bank of Perry
 Peoples State Bank of St. Joseph
 Cass County State Bank, Cassopolis, Michigan

(List of Banks concluded on next page)

Union State Bank, Buchanan, Michigan
Industrial State Bank, Kalamazoo, Michigan
Newport State Bank
The Michigan Bank, Detroit, Michigan
Coopersville State Bank
River Rouge Savings Bank
Hemlock State Bank
State Savings Bank, Clinton, Michigan
Citizens State Savings Bank of New Baltimore
Mt. Clemens Savings Bank
Macomb County Savings Bank, Richmond, Michigan
Citizens Bank of Saline
Saline Savings Bank
United Savings Bank of Tecumseh
Farmers State Bank of Concord

**AFFIDAVIT OF WILLIAM B. HARTMAN,
MEMBER OF THE FIRM OF HOWLETT,
HARTMAN & BEIER**

State of Michigan,
County of Oakland—ss.

William B. Hartman, of Pontiac, Michigan, deposes and says that he is the senior partner of the firm of Howlett, Hartman & Beier, attorneys for the Community National Bank of Pontiac and that for over twenty-five years said firm and its predecessors have acted as attorneys for said bank.

Deponent further says that said Community National Bank of Pontiac, has, since the adoption of Act 9 of the Public Acts of Michigan of 1953, consistently opposed the effect and validity of that act and in furtherance of that position, first, unsuccessfully sought to intervene in this cause and finally filed its motion for leave to file a brief *amici curiae* herein.

Deponent further says that his firm does not represent and never has represented the Appellant bank but is acting solely for the Community National Bank of Pontiac and those other Michigan banks which joined in the motion herein filed, each of which asked to join therein when they were informed that such action was about to be taken, it being understood that the fees and expenses of deponent's firm as well as the cost of printing the motion for leave to file brief *amici curiae* and the attached brief are to be paid solely by said Community National Bank of Pontiac.

Deponent says further that before said motion for leave to file a brief *amici curiae* was filed herein, galley proofs thereof and of the proposed brief attached thereto were mailed to each of said sixty-eight banks for approval with the request that corrections or revisions, if any, be communicated to deponent's firm by noon Wednesday, November 23, 1960: thereafter, no objections or suggestions for correction having been made by any of said sixty-eight (68) banks or by any one on their behalf, said motion and brief were printed and filed; subsequently and recently, eleven (11) of those banks, The Bank of Albion, The State Bank of St. Johns, The Farmers Bank of Mason, The Farmers and Merchants State Bank of Merrill, The St. Clair Shores National Bank, The Community National Bank of Ithaca, The Lapeer Savings Bank, The Isabella County State Bank, Mt. Pleasant, Michigan, The People's Bank of Bronson, The Benton Harbor State Bank and The Milan State Bank, all state banks, have asked to withdraw as moving parties.

Further deponent sayeth not.

William B. Hartman.

Subscribed and sworn to before me, a Notary Public, this 19th day of December, A. D., 1960.

Nick P. Krust,

Notary Public, Wayne County, Michigan,
My commission expires June 13, 1964.

REPLY BRIEF OF APPELLANT

FILE COPY

Office-Supreme Court, U.S.

FILED

JAN 11 1961

STATES

JAMES E. BROWNING, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (THREE RIVERS,
MICHIGAN), COMMERCIAL NATIONAL BANK OF
IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON,
and THE FIRST NATIONAL BANK AND
TRUST COMPANY OF KALAMAZOO, banking associations
organized under the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and
LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

Reply Brief of Appellant

Thomas G. Long
Victor W. Klein
Philip T. Van Zile, II
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1881 First National Building
Detroit 26, Michigan

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Michigan National Bank

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IN THE SUPREME COURT OF THE UNITED STATES

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Appellant,

**NATIONAL BANK OF WYANDOTTE,
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vs.

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Appellees.

**ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN**

Reply Brief of Appellant

Act 9 of the Public Acts of Michigan of 1953 was considered to be of doubtful validity at the very time of its enactment.⁽¹⁾ We submit that a careful reading and analysis of appellee's complex 234 page brief fails to dispel such doubts. Act 9 contravenes R. S. 5219.

⁽¹⁾See *infra*, pp. 34-6. See Statement and Brief of Appellant, Michigan National Bank, re Appellee's Objection to Motion of Sixty-eight Banks in Michigan for Leave to File a Brief Amici, pp. 2-5; Appellee Objections to Motion of Sixty-Eight Banks in Michigan for Leave to File a Brief Amici and Affidavit attached, pp. 9, par. 1; 15, 16, 20-1.

In its brief, appellee advances a series of arguments which, in effect, would require this Court to:

(1) rewrite the basic provisions of R. S. 5219;

(2) overrule decisions of this Court defining "other moneyed capital", "coming into competition with the business of national banks", and what constitutes tax discrimination;

(3) consider an investment in the shares of a commercial enterprise for profit (i.e., a savings and loan association) the equivalent of a deposit-debt (i.e., a bank deposit), notwithstanding that by statute such investment is "share capital",^[2] associations are prohibited from taking "deposits",^[3] and "investors in savings and loan associations are purchasers of stock";^[4]

(4) conclude that because banks and savings and loan associations were at one time not in competition (because banks were then without power to make mortgages or to take savings) as a matter of law they cannot now or ever be in competition under R. S. 5219—no matter how keen or extensive the competition in fact may be; and.

(5) hold that this Court is foreclosed by an inexorable, inflexible law from considering the facts regarding the operations of savings and loan associations today

^[2]17 Mich. Stat. Annotated (M.S.A.) 23.541 (D); 23.542; 17 M.S.A. Cum. Supp. 1959, 23.545; Michigan Attorney General Opinions, 1913, p. 83; 12 U.S.C.A. Sec. 1464(b).

^[3]17 M.S.A. 23.580; 12 U.S.C.A. Sec. 1464(b).

^[4]*Michigan Savings and Loan League, et al. v. Municipal Finance Commission of Michigan* (1956) 347 Michigan 311, 319; 79 NW 2d 590; *Wisconsin Bankers Association v. Federal Home Loan Board* (1960) U.S. District Court for District of Columbia (not yet reported).

and from determining that there is no "just cause" for a state to exempt them from taxation because in prior times there may have been reason for a state so to do.

I

Contrary to Appellee's contentions—

Money invested in and Employed by Savings and Loan Associations is "other moneyed capital . . . coming into competition with the business of National Banks" under R. S. 5219.

The record in this case shows without dispute that:

(1) Savings and loan associations are the principal competitors of national banks in Michigan for the residential mortgage loan business;^[5]

(2) The capital employed by them in this business is substantial in amount^[5] (presently in excess of \$1,600,000,000 in Michigan); and is substantial when compared to the total capitalization of national banks in Michigan^[6]; and

(3) Such mortgage business is an important and essential phase of the business of national banks in Michigan, including that of appellant.^[7]

Notwithstanding this uncontroverted proof, appellee contends that, as a matter of law, national banks and their shareholders in Michigan are not protected by R. S. 5219 from tax discrimination favoring such competition. Appellee asserts that the money invested in savings and loan associa-

^[5]See Appellant's Brief pp. 9-17 and record references in support thereof.

^[6]See Appellant's Brief pp. 30-31 and record references in support thereof.

^[7]See Appellant's Brief pp. 10-11, 42-44 and record references in support thereof.

tions is not "other moneyed capital . . . coming into competition with the business of national banks" because:

(a) savings and loan associations are different in nature, character, purpose and organization from national banks because they may not accept or do business on deposits, and they are not permitted to do a general banking business;

(b) investments in savings and loan shares are like bank deposits and do not constitute capital invested in and employed by a business; and

(c) no matter how substantial such capital is when compared to total capitalization of all national banks in Michigan, it must also be shown that it is substantial compared to all other moneyed capital in Michigan.

Contrary to Appellee's contentions—

Other Moneyed Capital coming into competition is not limited to capital invested in a business which accepts deposits or engages in a general banking business.

Throughout its entire brief, appellee urges as its central and dominant theme—with variations—that R. S. 5219 does not apply to money invested in and employed by savings and loan associations because—unlike national banks—such associations cannot accept deposits or engage in a general banking business.^[8] Obviously, the only business which may accept deposits or do a general banking business is a bank. Most states, including Michigan, so provide by statute. Since no business but a bank may accept deposits or engage in a general banking business, appellee would by its argument exclude from the ambit of R. S. 5219 all other moneyed capital employed by individuals, partnerships or corporations in financial businesses—other than banks—no matter how sub-

^[8]Appellee's Brief, pp. 41, 43-5, 68, 181-2 (footnote 168), 189, 205, Par. (11).

stantially such capital competed with the business of national banks.

Congress in enacting and amending R. S. 5219—specifying the permissible limits within which a state might tax national bank shares—did not limit R. S. 5219 in this way. To the contrary, Congress in R. S. 5219 expressly provided:

“Sec. 1(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon **other moneyed capital** in the hands of individual citizens of such State **coming into competition with the business of national banks . . .**”

Originally, in 1864 when R. S. 5219 was enacted, Congress permitted states to tax national bank shares provided that the rate was not greater than that imposed upon (1) other moneyed capital and (2) shares of state banks. By amendment in 1868, Congress eliminated the second limitation relating to state bank shares, as surplusage, and retained only the moneyed capital limitation. (February 10, 1868, ch. 7, 15 Stat. 34).

Consistently thereafter this Court has refused to recognize the argument that R. S. 5219 applies only to state banks or their shares. *Merchants National Bank v. Richmond*, 256 U. S. 635; 65 L. Ed. 1135; *First National Bank of Hartford v. City of Hartford*, 273 U. S. 548; 71 L. Ed. 767.

Congress also has consistently refused to limit “other moneyed capital” to capital invested in shares of state banks despite repeated bills introduced and proposals so to do.^[9]

Professor Woodworth, the paid expert upon whom appellee relies throughout, predicates his entire testimony upon a

^[9]See Appellants Brief, p. 41 and particularly footnote 35 for references.

thesis which is directly contrary to that of Congress and of this Court upon the subject. Woodworth said (R. 844a) :

"Congress in my opinion is concerned with the protection of national banks from discriminatory taxes levied by the separate states in favor of state chartered institutions and private commercial banks performing substantially the same services. The competitive area with which Congress was most concerned was monetary services as listed above, engaged in at that time by state chartered banks, trust companies, private loan companies and private bankers."

See footnote 20, *infra*, p. 13.

Contrary to appellee's contentions "other moneyed capital" has not been limited to businesses which may accept and employ deposits in its business or which are engaged in the general business of banking. *Hartford, supra*, pp. 556-7; *Minnesota v. First National Bank*, 273 U.S. 561, 567; 71 L. Ed. 774.

Contrary to Appellee's contention—

"Moneyed capital . . . coming into competition," as defined by this Court, is not limited to capital employed by a bank or by a business similar in character, purpose and organization.

Appellee insists throughout that businesses and institutions not similar in character, purpose and organization to national banks cannot be "moneyed capital coming into competition" with them.^[10] Appellee asks "How can fundamentally different institutions be said to be in 'substantial competition' within the meaning of Sec. 5219? How can a non-stock entity that cannot accept deposits compete with the capitalized stock corporation in the latter's employment of

^[10] Appellees Brief, pp. 37, 54, 83, 84, 97, 141, 157, 205, (Par. (9)).

deposit moneys?"^[11] (Appellee's Brief p. 84. See illustration, urging this proposition footnote 168 in Appellee's Brief, 181-2).

This Court categorically answered these questions in *Hartford, supra*, when it said (273 U.S. 577-8):

"... Competition in the sense intended arises **not from the character of the business** of those who compete **but from the manner of the employment of the capital at their command** . . . (557)

"To so restrict the meaning and application of R. S. 5219 would defeat its purpose . . ." (558)

Contrary to Appellee's contentions—^[12]

The area of competition of the "other moneyed capital" need not be in all phases of the business of national banks—so long as such competitive business is substantial in amount and constituted a substantial phase of the business of the bank.

See Appellant's Brief on the law pp. 34-7; 39-44.

^[11]Throughout Appellee's Brief (pp. 169, 68, 41, 108), appellee asserts that appellant bank in the mortgage business employs moneys **only "from deposits, and not from its capital account."**

This statement is in error. Appellee takes one sentence out of context from the testimony of Russell Fairless, Vice President of appellant bank, (R. 687a), when his entire testimony is clearly and unequivocally the other way. Because appellant bank finds no necessity to trace or allocate the source of its funds used in the mortgage business—as between capital or deposits (R. 869a)—does not warrant appellee's assertion that therefore only deposit funds were used. The testimony of Fairless is clear: "We don't break it down . . . we use the capital in every area." (R. 688-9a)

"Q: You were asked by Mr. Dexter what funds are used in . . . making loans . . . ?

"A: **We use all of the funds, capital, surplus, undivided profits, reserves, deposits, everything.**" (R. 708a)

^[12]Appellee's Brief, pp. 37, 41, 56, 85, 116 ("Second" paragraph), 184-5, 202.

8

Where, as here, the competitive business constitutes an important and essential part of the entire banking business of appellant and of all national banks in Michigan, the adverse impact of tax discrimination favoring the banks' competitors is obvious. As this Court said in *Hartford*, *supra*, (273 U.S. 558) :

"... With the great increase in investments by individuals and the growth of concerns engaged in **particular phases** of banking shown by the evidence in this case and in *Minnesota v. First National Bank of St. Paul* ... (273 U.S. 561, 567) discrimination with respect to capital thus used could readily be carried to a point where the business of national banks would be seriously curtailed ..." (p. 558).

Contrary to appellee's contention (Brief pp. 198-203), *Hartford* does not hold that there must be discrimination "across the board" as to businesses, which, taken collectively, compete with all or virtually all phases of the national banking business. This Court said in *Hartford*, at p. 556 :

"... the requirement of approximate equality in taxation is not limited to investment of moneyed capital in shares of state banks or to competing capital employed in private banking. The **restriction applies** as well **when the competition exists only with respect to particular features of the business of national banks** ..."

See *infra*, p. 27, footnote 35a.

It is clear beyond question that the competition of saving and loan associations with appellant and other national banks in Michigan in the residential mortgage business is substantial in amount, and that such business constitutes a substantial, "sizeable and important" phase of the business of appellant and other national banks in Michigan. It is not an unimportant and too "narrow and restricted field"

to be within R. S. 5219, as asserted by appellee. See facts stated in Appellant's Brief, pp. 9-10; 42-44 and particularly footnote 37, p. 44.

Contrary to Appellee's contentions—^[13]

"Other moneyed capital" under R. S. 5219 need not be substantial as compared to all moneyed capital employed in the state—so long as it is "substantial when compared with the capitalization of national banks."

Appellee's contention on this point is completely answered by *Hartford, supra*, p. 558 and is discussed in Appellant's Brief pp. 30-1.

Not only is the amount of competing capital of the savings and loan associations in Michigan shown to be three times the total capitalization of national banks in Michigan, but there is also extensive and voluminous proof that the amount of such savings and loan competition in the residential mortgage business is substantial in comparison to all such residential mortgage business done by all competitors in such business—other banks, insurance companies, mortgage businesses operated corporately, by partnership and individuals, credit unions and others. This proof, though relating specifically to the seven counties where appellant bank does business, is undoubtedly representative of the entire state. See footnote 34, pp. 31-2 of Appellant's brief and record references therein cited.

Contrary to Appellee's contentions—

Investments in savings and loan associations constitute "moneyed capital" within R. S. 5219 and are not deposit-debts such as deposits in a bank.

"Moneyed capital" under R. S. 5219 is money invested in "enterprises in which the capital employed in carrying on

^[13] Appellee's Brief, pp. 40, 56, 57, 69, 88 (f.n. 114), 94 (paragraph 2), 183.

its business is money, where the object of the business is the making of profit by its use as money . . . reduced again to money and reinvested." *Mercantile Bank v. New York* 121 U.S. 138, 157; 30 L. Ed. 895.

Such moneyed capital under R. S. 5219 may be money, as described above; employed by an individual, a group of individuals, a joint enterprise, or as a partnership (whether limited or general), in a business (such as the mortgage business) in competition with a substantial phase of the business of national banks, *Hartford, supra*, pp. 553, 555; 558; *Minnesota, supra*, p. 567; *First National Bank v. Anderson* 269 U.S. 341, 347-8; 70 L. Ed. 295; *Merchants National Bank v. Richmond* 256 U.S. 635, 639; 65 L. Ed. 1135. Similarly, such moneyed capital may also be money invested by individuals in "shares of stock or other interests . . . in all enterprises in which the capital employed in carrying on its business is money . . ." *Mercantile, supra*, p. 157; *Talbott v. Silver Bow County* 139 U.S. 438, 448; 35 L. Ed. 210.

Such moneyed capital need not be employed in a business which accepts deposit or engages in a general banking business, *supra*, pp. 4-6. Nor need it be a share of bank stock or its equivalent, as appellee contends. The only capital which is the equivalent of national bank stock is stock in a state or private bank. The Fourteenth Amendment to the Constitution of the United States protects national bank stock from discrimination favoring such equivalent moneyed capital, namely, stock in state or private banks. However, it is clear, and has been repeatedly held by this Court, that R. S. 5219 is not limited in its protection of national bank shares to the equivalent of shares of bank stock. *Richmond, supra*, p. 639; *Hartford, supra*, p. 556; cf. *First National Bank of Shreveport v. Louisiana State Tax Commission*, 289 U.S. 60; 77 L. Ed. 1030; see Appellant's Brief pp. 40-41, 78. Appellee's contention that money invested in shares of savings and loan associations is not moneyed capital under R. S. 5219 because

it is not the equivalent of national bank shares is clearly erroneous

Appellee contends that an investment in shares of a savings and loan association is not capital at all, but rather is a deposit, like a bank deposit, and therefore is not moneyed capital under R. S. 5219.^[14]

That investors in savings and loan associations are stockholders—not depositors (debtors), like bank depositors—is well established by statute and decisions. See Appellant's Brief, pp. 54-57.

To maintain its present contention that an investment in shares of savings and loan associations is like a deposit (debt) in a bank would require this Court:

(a) to ignore both the Michigan and Federal statutes, under which savings and loan associations are respectively organized and operate, which expressly and unequivocally provide that such investments constitute "share capital," or "capital stock,"^[15] prohibit such associations from accepting deposits,^[16] and provide that even after notice of withdrawal, such "shareholders . . . shall remain shareholders until paid and shall not become creditors"^[17] and

(b) to overrule both the recent Michigan Supreme Court decision, *Michigan Savings and Loan League, et al v. Municipal Finance Commission of Michigan*, *supra*, 347 Mich. 311; 319, 322; 79 N.W. 2d 590, constru-

^[14] Appellee's Brief, pp. 31, 42, 70-1, 116 (Par. "Third"), 173-4, 189, 194-5.

^[15] 17 Mich. Stat. Annotated (MSA) 23.541 (D); 23.542; 17 M.S.A. Cum. Supp. 1959; 23.545. Michigan Attorney General Opinions 1913, p. 83.

^[16] 17 M.S.A. 23.580; 12 U.S.C.A. Sec. 1464(b).

^[17] M.S.A. Sec. 23.546.

ing both the Michigan statute and the Federal statute under which these associations are organized, holding that "in substance . . . investors in savings and loan associations are . . . purchasers of stock therein," (rejecting the contention that "investments in savings and loan associations should not be regarded as stock purchases . . . [and] that the transaction is analogous to a deposit in the savings department of a bank,")^[18] and a recent decision of a Federal Court to like effect.^[19]

Nowhere in appellee's voluminous brief is this leading Michigan case mentioned or discussed, although in 1956 the Attorney General of the State of Michigan before the Michigan Supreme Court successfully and strenuously assailed the very proposition he now urges here. He there argued at length to the Supreme Court of Michigan that it was his considered belief and understanding that: —

"PAYMENTS ON SHARES IN SAVINGS AND LOAN ASSOCIATIONS DO NOT CONSTITUTE DEPOSITS"

(Brief of Attorney General, for Municipal Finance Commission, of the State of Michigan, pp. 14 et seq.). (Emphasis by capitalizing that of Michigan Attorney General).

The Attorney General of Michigan has always heretofore been of the opinion that a shareholder of a Michigan savings and loan association is a stockholder and **not a creditor**.^[19a] Op. Atty. Gen. 1933-4, p. 29.

^[18] *Michigan Saving and Loan Leagues*, *supra*, 347 Mich. at p. 319.

^[19] *Wisconsin Bankers Association, et al. v. Federal Home Loan Board* (1960) U. S. District Court for District of Columbia (not yet reported).

^[19a] Prior to this litigation the Michigan Bankers Association took the position (in a pamphlet prepared and published by it and circulated to the general public by banks generally, "Facts about the difference between banks and savings and loan associations" (Ex. 217, R. 1316-7a) . . .) stating that in fact and in practice, " . . . **banks accept deposits. Savings and loan associations accept investment in shares . . . Bank depositors are creditors. Association members are shareholders.**"

Expedience does not change substantive law. Nor, we submit, does the theoretical testimony of Appellee's witness, Professor Woodworth,^[20] change the Federal or Michigan statutes or the decisions holding that "in substance . . . investors in savings and loan associations are . . . purchasers of stock therein." (Appellant objected to this testimony (R. 805a-7a), which objection was sustained by the trial court, and a separate record was made thereof (R. 810a)).

On cross-examination, Professor Woodworth was obliged to admit that "a savings depositor in a commercial bank is a creditor . . . whereas in Michigan an investor in shares in

^[20] Although Professor Woodworth admitted "I am not familiar with the Michigan law" (R. 893); he would rewrite the Michigan (and Federal) statute and would overrule the above Michigan decision.

Moreover, Professor Woodworth does not approve of and would rewrite R. S. 5219. Although he admitted that "the commercial banks making mortgage loans on residential property compete with savings and loan [associations] in that area and vice versa" (R. 869a), it is his theory that the difference in character, purpose and organization of national banks (which do a general banking business) from savings and loan associations (which may not do a general banking business) controls the question of competition under R. S. 5219—not the manner of employment of capital by each. See *supra*, pp. 6-7. See Appellee's brief pp. 42-3. Professor Woodworth's opinion is directly contrary to that of this Court in *Hartford, Minnesota* and *Richmond, supra*, and to that of the Comptroller of Currency; see Appellant's Brief, p. 83.

He also disagrees with the standard set by Congress in R. S. 5219 that the state tax on national bank shares shall "not be at a greater rate" than imposed upon "other ~~managed~~ capital," and insists that the proper way to determine tax burden is upon gross assets of banks and of the competing institutions, without deducting liabilities. In effect he would substitute a tax on assets, which is not permitted by R. S. 5219. Thus his opinion is contrary to that of this Court, rejecting such a contention in *Minnesota v. First National Bank*, 273 U.S. 561, 564; 71 L. Ed. 774; *Des Moines National Bank v. Fairweather*, 263 U.S. 103, 68 L. Ed. 191. See Appellant's Brief, pp. 52-3.

a savings and loan association is a shareholder in the corporation . . . legally speaking" (R. 884a). And also factually (R. 884a).^[21]

^[21]On cross-examination, Professor Woodworth admitted: "Savings depositors in a national bank . . . are merely creditors of the bank" (R. 885a), [See M.S.A. Sec. 23.546], whereas "in savings and loan [associations] there are not any depositors" (R. 885a). The commercial bank agrees to pay an agreed amount of interest to the depositor . . . and if it fails to pay that interest, the depositor can sue . . . (R. 884a), whereas "There is no agreed rate of return on savings [and loan] association shares" and a dividend may be declared and paid by the directors only if and to the extent earnings are sufficient (R. 884a). In the event of insolvency or liquidation a depositor is paid before shareholders in a national bank (R. 885a) and although savings and loan associations have no depositors, all debts are paid ahead of the shareholders (R. 885a). [See Opinion of Attorney General of Michigan 1926-8, p. 267]. Unlike a depositor in a bank, the shareholder of a savings and loan association is the owner of the undivided profits and surplus in the event of liquidation (R. 885a) and if the association loses money it reflects upon his interest as a shareholder (R. 885a).

"An investor in the savings and loan association invests primarily for return . . . and safety of the principal (R. 886a) and the more money an association makes there is "more money available for dividends (R. 885a). Since in a savings and loan [association] there are no deposit liabilities and in the bank there is a substantial deposit liability . . . shares in savings and loan associations have a greater degree of safety than shares of national bank[s]" (R. 886a). Because of "deposit liability," the Professor admitted that "the risk of a shareholder in national bank shares is substantially greater than the risk of a shareholder of a savings and loan association (R. 886a)." Like any stock, the more risk taken, the greater the possibility that a person "might make more money, but also might lose more money (R. 887a)." "An investor [in a savings and loan association] is interested in the return of his investment . . . to make as much money as he can on his investment (R. 900a)." "The higher the return they get . . . the better they like it . . . and the more people are attracted to investing in those shares."

Clearly, an investment in savings and loan association shares is an investment in "capital" stock of a "private corporation for profit,"^[22] in which yield and safety are paramount, rather than equity growth. As the Michigan Supreme Court said in *Michigan Loan League, supra*, such investment is not "in substance . . . analogous to a deposit in the savings department of a bank."

II

Contrary to Appellee contentions—

Act 9 violates R. S. 5219 by taxing national bank shares "at a greater rate than is assessed upon other moneyed capital . . . coming into competition with the business of national banks."

Appellee does not deny that Act 9 (and the other minor state taxes) taxes national bank shares at a rate approximately 8 times greater than shares of Michigan savings and loan associations and 13 times greater than the shares of federal savings and loan associations.

The gist of appellee's argument is that even though the rate is greater (and the shares in these associations are

^[22]Attorney General's statement to Michigan Supreme Court, *Michigan and Loan League v. Municipal Finance Commission, supra*, brief p. 7.

Not only does the statute under which the associations are organized designate investments therein as "share capital" and prohibit the taking of "deposits" (footnotes 2 and 3, *supra*, p. 2), so also do their articles of incorporation and their by-laws, under which they operate (R. 1026a), and their share certificates issued to investors. Although copies of such certificates were introduced into evidence none was incorporated in printed record. For convenience, copies are attached hereto as Appendix A.

"other moneyed capital")^[23]—because the tax is upon "two distinctly different types of institutions" (Appellee Brief p. 97)—[(1) banks engaging in banking operations use deposit funds (debt) and (2) savings and loan associations may not take or use deposits]—there should be some other test of discrimination employed than the one expressly provided by Congress in R. S. 5219, i.e. that the tax shall not be at a "greater rate than is assessed upon other money capital".

Congress in R. S. 5219 did not provide that there be a different test of discrimination where moneyed capital is employed by "different types of institutions," as appellee suggests. This Court has repeatedly held that "moneyed capital" under R. S. 5219 applies to those "individuals and firms [who] **do not receive deposits**" (*Hartford, supra*, p. 555) and "the requirement of approximate equality in taxation **is not limited to investment of moneyed capital in shares of state banks . . . or private banking.**" (p. 556) "**Competition in the sense intended arises not from the character of the business . . . but from the manner of the employment of the capital at their command.**" To like effect, *Minnesota, supra*, p. 567. See *supra* pp. 4-8:

The fact that the competing business in which the other moneyed capital is employed does not receive deposits or borrow extensively^[24] does not permit a state to tax it at a lesser

^[23]If shares in savings and loan associations were not "other moneyed capital", discussion of discrimination would be unnecessary because R. S. 5219 protects national bank shares only as against discrimination favoring "other moneyed capital".

That moneys invested in and employed by savings and loan associations are "other moneyed capital . . . coming into competition," has been fully discussed.

^[24]Borrowings by the 16 savings and loan associations operating in the seven cities where appellant bank has offices aggregated \$4,605,000 outstanding at the end of the fiscal period of each in 1952. (R. 977A, 982-7a, 1008a, 1017a)

rate than national bank shares. *Hartford* necessarily rejects this contention. Cf. *First National Bank of Shreveport*, Appellant's Brief pp. 40-41, *supra*, pp. 4-8. The moneyed capital—which Congress in R. S. 5219 said may not be favored—is that of an individual, or as invested by him in shares of a corporation, in a partnership or other business, which competes with a substantial phase of the business of national banks, whether or not or to what degree, they take deposits or borrow money to use in such business—even though they are not engaged in the general banking business. Congress repeatedly has refused to limit other moneyed capital to that invested in other banks. (See Appellant's Brief, footnote 35, page 41).

Notwithstanding, appellee (and its witness Woodworth) insists throughout its brief that "other moneyed capital" must be limited to like institutions who take and use deposits in the general banking business—i.e. other banks (see *supra*, p. 5) ; or that a different test of discrimination be substituted for that expressly provided by Congress in R. S. 5219 and as determined by this Court.

In one effort to offset the fact that national banks employ capital and deposits (for which deposits the bank is liable) whereas savings and loan associations employ only capital and cannot take or use deposits), appellee urges that the ratio of burden of the taxes upon total assets—without deducting liabilities—be the controlling test of discrimination under R. S. 5219. This very same argument was rejected by this Court in *Minnesota v. First National Bank*, *supra*, at page 564:

"... it is urged, if bank shares were taxed at the same rate without deducting the bank's liabilities in ascertaining the value of their shares, the amount of the tax would be approximately the same. **This argument ignores the fact that the tax authorized by § 5219 is against the holders of the bank shares and is measured by the value**

of the shares, and not by the assets of the bank without deduction of its liabilities, *Des Moines National Bank v. Fairweather*, 263 U.S. 193, and that the bank share tax must be compared with the tax assessed on competing moneyed capital of individuals invested in credits, or the tax on capital invested by individuals in the shares of corporations whose business competed with that of national banks . . . ”

Appellee, in another effort to avoid the test prescribed by the statute, argues that share capital of savings and loan associations is not other moneyed capital, but is a deposit-debt, like a deposit in a commercial bank,^[25] and therefore, the shares of savings and loan associations—contrary to the Michigan statutes taxing such associations and their shares—should be valued by excluding the capital, and only should include reserves and undivided profits. This argument has been completely answered in Appellant's Brief, pp. 53-59 and *supra*, pp. 9-15.

The suggestion of appellee that if the tax be on shares of a savings and loan association that it also should be on the

^[25]It does not follow as appellee suggests (Appellee's Brief, pp. 74-5, 173) that if savings and loan shares are other moneyed capital that then too deposits in a commercial bank are other moneyed capital.

Deposits in a bank are a debt—a liability and not an investment in a share of stock of a corporation or an interest in a partnership or other business enterprise. “Investors in savings and loan associations are . . . purchasers of stock therein.” *Supra*, pp. 9-15.

While not before this Court in this case, this Court has indicated in *Mercantile, supra*, that “deposits” in mutual savings banks are other moneyed capital because they represent the sole proprietary interest in such business (see Appellant's Brief, p. 58). We at no time suggested—and at all times have denied—that a deposit in a national or state bank, having capital stock, was anything but a debt-liability. It is not moneyed capital.

deposits^[26] of the banks is merely a different version of the total asset (without deducting liabilities) tax test rejected by this Court in *Minnesota*. As stated in *Minnesota*, a tax on shares (such as Act 9) can not be treated as a tax on the bank itself or upon or measured by the gross assets of the bank without deducting deposits and other liabilities.

Appellee suggests (Appellee's Brief, p. 114) that if the State of Michigan had provided for a valuation of bank shares and other moneyed capital on a capitalization on one year's earnings (before Federal income taxes) method, that there would be no discrimination against appellant bank as compared with the 16 savings and loan associations. This suggestion has several basic fallacies: (1) Act 9 of the State of Michigan did not impose such a tax or provide for a valuation of national bank shares, savings and loan shares, or other moneyed capital in such a manner. It specified with particularity the method of valuation of the shares of banks—paid in capital, surplus and undivided profits—which is a reasonable method of valuation. (2) Capitalization of only one year's earnings before income taxes (as suggested by appellee) certainly is not an established, reasonable or fair method of valuation of shares. (3) Since this hypothetical method was not provided under Act 9 and was not applied to each and all of the other national banks in the State, nor to each and all savings and loan associations in Michigan, nor to any other moneyed capital in the state—with earnings or losses varying in each case—it is impossible to determine whether such a tax would have met the mandate of R. S. 5219. Certainly, there can be no assumption of tax equality required under R. S. 5219.

^[26]Appellee again erroneously states that appellant bank only used deposits in its mortgage loan business. This is not so—it (and all other national banks) employ their capital, surplus and undivided profits in each and all phases of its business. See footnote 11, *supra*, p. 7.

Appellee throughout attempts to conjure up different types of taxes or methods of valuation which the State of Michigan might have enacted^[27] and attempts to substitute or apply a different law or tax standard than was enacted by Congress under R. S. 5219, as construed by this Court. We are not here concerned with a hypothetical Federal statute limiting state taxes on national banks or their shares, nor with a hypothetical state tax. Congress enacted R. S. 5219 and Michigan enacted Act 9. Those are the only statutes before us. Does Act 9 violate R. S. 5219 is the question?

Under these laws it is clear that Act 9 violates R. S. 5219. As this Court stated in *Pelton v. National Bank*, 101 U.S. 143, 146; 25 L. Ed. 901:

"It is sufficient to say that we are quite satisfied that any system of assessment of **taxes which exacts** from the owner of the shares of a national bank **a larger sum in proportion to their actual value** than it does from the owner of other moneyed capital **valued in like manner**, does tax them at a greater rate within the meaning of the act of Congress."

This is the test which has been consistently followed by this Court. *Merchants National Bank of Richmond v. Richmond*, *supra*; *Iowa-Des Moines National Bank v. Bennett* 273 U.S. 561; 71 L. Ed. 774; *Minnesota v. First National Bank of St. Paul*, *supra*; and *First National Bank of Guthrie Center v. Anderson*, *supra*.

[27] Appellee suggested several hypothetical comparatives—not in the law—stating "... appellees are not urging that any one of these particular comparatives constitutes the best method of equating the effect of the Michigan tax structure on these non-comparable, noncompetitive types of institutions." Appellees' Brief, p. 112.

Contrary to Appellee's contentions—

Congress has not provided or indicated that moneys invested in or employed by savings and loan associations are not "moneyed capital" under R. S. 5219.

Appellee, in its Brief, pp. 25-26, 155-166, asserts the erroneous proposition that "Congress has made clear that the phrase 'other moneyed capital . . . coming into competition with the business of national banks,' as used in §5219, does not include savings and loan associations."

In support of this proposition appellee is silent as to the clear language of R. S. 5219—which specifically excepts **only** personal investments **not in competition**. Nor does appellee refer to any Congressional history relating to R. S. 5219 that indicates an intent of Congress to withdraw from R. S. 5219 moneyed capital invested in and employed by savings and loan associations in competition with the business of national banks.

Appellee seeks to sustain its proposition by reference to the Home Owners Loan Act of 1933,^[28] the Joint Stock Land Bank Act of 1916,^[29] and the National Agricultural Credit Corporation Act of 1923,^[30] together with two Federal Court decisions.^[31]

^[28]12 U.S.C. §1461, et seq.

^[29]12 U.S.C. §932.

^[30]12 U.S.C. §1261.

^[31]*Union National Bank of Clarksburg, et al. v. Home loan Bank Board*, 233 F. 2d 695, and *U.S.A., ex rel State of Wisconsin v. First Federal Savings and Loan Association and Federal Home Loan Bank Board*, 151 F. Supp. 690.

These cases are not in point. They hold only that banks are not "local thrift and home-financing institutions in the sense in
(Continued on next page)

Appellee in effect argues (Brief p. 159) that because

(a) **shares** of Joint Stock Land Banks and National Agricultural Credit Corporations were protected from state taxation at a greater rate than other moneyed capital (to the same degree as national bank shares), and

(b) **shares** of federal savings & loan associations (organized under the Home Owner's Loan Act of 1933) are not protected from state taxation at all, and the only limitation upon state taxation of federal **associations** is that such associations be taxed at no greater rate than the state imposes upon state associations,^[32]

(Continued from page 21)

which that term is used in **Sec. 5(e) of the Home Owners' Loan Act.**" (233 Fed. 2d 696) because, while it is recognized that "These savings and loan associations do some of the same things which banks do, obviously they do not do a general banking business." (151 Fed. Supp. 697) **Identity of character** of competing institutions, while perhaps vital to **Sec. 5(e) of the Home Owners' Loan Act, is immaterial under R. S. 5219.** Competition in the employment of capital, recognized as existing in *Clarksburg*, at page 697, *supra*, is of no consequence under **Sec. 5(e)**, whereas, it is the determining factor under **R. S. 5219.**

^[32]The Home Owner's Loan Act of 1933 provides some limited protection against state taxation as to Federal savings and loan **associations, as corporations.** It does not deal in any way with **state associations or their shares.** Nor does it protect in any way **an individual's investment in shares** of a Federal association against state taxation.

Paragraph (h), §1464 of the Home Owners Loan Act of 1933, in dealing with taxation of **associations** by the **United States** uses the words:

"their franchise, capital, reserves and surplus and their loans and income"

and insofar as paragraph (h) imposes a restriction on **state** taxation uses the same substantive words.

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that it must follow that **shares** of savings and loan associations are not other moneyed capital under R. S. 5219. This is a non-sequitur.

Because shares of national banks and of Joint Stock Land Bank and National Agricultural Credit Corporations are given broader protection from discriminatory state taxation—i.e. not at a greater rate than other moneyed capital—, than are shares of federal savings and loan associations (which are given none), it does not follow that such associations' shares are not other moneyed capital within R. S. 5219.

Moneys invested in and employed by a business is not "other moneyed capital" under R. S. 5219 merely because a federal statute does or does not afford it protection from discriminatory state taxation, in a manner comparable to that afforded national banks or their shares. For example, money invested and employed by individuals in a business loaning moneys secured by mortgages, by partnerships or by corporations engaged in such business, has been held by this court to be other moneyed capital under R. S. 5219. Such investments are not protected from state tax discrimination by federal or other statute. They constitute other moneyed capital because they fall within the definition of other moneyed capital, as announced by this Court in *Mercantile* and in later cases.

(Continued from page 22)

There is nothing in paragraph (h) in relation to **state** taxation of "**shares** of such association."

There is not in the instant case a question of taxation of national **banks** as compared with savings and loan **associations** but a comparison of the taxation of shares of national banks as compared with "shares of such associations." The tax on the **bank shares** is "5½ mills upon each dollar of the capital account of such . . . bank . . . represented by such shares" and on the **savings and loan shares** is "1/25 of 1% [2/5 mills] on the paid in value of their shares."

Shares in joint-stock land banks or in national Agricultural Credit Corporations are not moneyed capital under R. S. 5219 because of 12 U.S.C. 932 or 12 U.S.C. 1261 (the statutes under which they are organized)—which protects them from state taxation comparable to that provided shares of national banks—but they are or are not moneyed capital, depending upon whether or not they have the attributes of moneyed capital, as defined by this Court in *Mercantile* and later decisions. So too, with shares in federal savings and loan associations (organized under the Home Owners Loan Act of 1933). They are or are not other moneyed capital because the moneys invested in and employed by such association have or have not the attributes of other moneyed capital, as defined by this Court, and not because Congress did or did not give them as broad protection as shares in Joint Stock Land Banks or in Agricultural Credit Corporations.

In enacting the 1933 Act, Congress was not dealing with state taxation of national bank shares. Congress had long before passed R. S. 5219, completely covering that subject. If Congress had intended to withdraw shares in federal associations, it would have so provided in R. S. 5219 or would have so provided in the 1933 Act. It did neither. Nor, is there any inconsistency between giving full effect to both. The 1933 Act does not repeal R. S. 5219, either expressly or by implication, by withdrawing from the purview of the basic statute protecting national bank shares any "other moneyed capital . . . coming into competition"—whether invested in federal associations, state associations or otherwise.

IV

Contrary to Appellee's contentions ^[33]—

This Court is not foreclosed from determining whether or not under present day operations and conditions a state, subject to R. S. 5219, has "just cause" to dis-

^[33] Appellee's Brief pp. 148, 152.

criminate against national bank shares by "partially exempting" [34] savings and loan associations of their shares from taxation—merely because there may have been just cause in prior times.

The paramount Congressional limitation provided in R. S. 5219 is the prohibition against discriminatory taxation by a state against national banks and their shares in favor of other moneyed capital coming into competition with the business of national banks. This is a federal legislative injunction against the states and cannot be overturned or avoided by a state with impunity.

There is no exemption or exclusion of moneyed capital invested in and employed by savings and loan associations from the operation of R. S. 5219 in R. S. 5219 or in any other Federal law.

Because savings and loan associations of prior times

(a) were not in competition with the then business of national banks (when national banks were not empowered to make mortgages or to take savings) (cf. *Mercantile, supra*), and

(b) were then small quasi-charitable, mutual non-commercial organizations where "poor people" banded together to save their small weekly wages to enable one another to build small homes,

it does not follow, as appellee urges, that this Court must blindly hold that whatever the public policy then was must be the public policy today and that what might have then been just cause to exempt, as a matter of inexorable, inflexible law, must now be labeled just cause today under the completely different facts and operations which now obtain.

[34] No part of the shares of savings and loan associations are presently exempt from tax by the State of Michigan—they are merely taxed at a lower or preferred rate, which is a discrimination. (See Appellant's Brief, pp. 60-1.)

Such a doctrine urged by appellee is repugnant to what this Court has so eloquently and unequivocally held in *Brown v. Board of Education*, 347 U.S. 483; 98 L. Ed. 873, where it said at pp.492-3:

"In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws."

To like effect see *Tigner v. Texas*, 310 U.S. 141, 144, 145-7; 84 L. Ed. 1422; *City of San Antonio v. San Antonio Public Service Company*, 255 U.S. 547, 555-6; 65 L. Ed. 777.

As was stated by this Court in *Patton v. United States* 281 U.S. 276; 74 L. Ed. 854; at page 306:

"The public policy of one generation may not, under changed conditions, be the public policy of another."

The so-called exemption doctrine of *Mercantile, supra*, (mutual savings banks) was predicated upon a finding of "just cause" by the Court in the ~~said~~ of those days (1887). When all intangible property was considered to be "moneyed capital"^[35]—even though not in competition with

[35] The early cases considered that all types of intangible property were included in "moneyed capital" under R. S. 5219. *Boyer v. Boyer* 113 U.S. 689, 28 L. Ed. 1089 (1885). However, beginning with *Mercantile* "moneyed capital" more and more was held to be money employed in a business whose business was money and such business came into competition with the business of national banks. Competition has become the controlling test of what constitutes "moneyed capital" under R. S. 5219. In 1923, Congress codified the decisions of this Court making competition the controlling test.

the business of national banks—an exemption of other than “a material part” of all of such other moneyed capital (a “partial exemption”) did not violate R. S. 5219 *Hepburn v. School Directors* 90 U.S. 480; whereas an exemption of a “very material part” of all such other (non-competing) moneyed capital did violate R. S. 5219, *Boyer v. Boyer* 113 U.S. 689, 693. However, as the concept of “moneyed capital” changed, the so-called partial exemption doctrine was no longer necessary to permit a state to exempt or prefer intangibles that did not compete with national banks. Accordingly, that doctrine was no longer followed by this Court and has not been discussed or mentioned by this Court in any case under R. S. 5219 since 1899—for over 61 years. We do not believe that such doctrine presently obtains.^[35a] We submit that competition is now the sole and controlling test—so

^[35a]Contrary to appellee’s contention (Brief pp. 199-202), *Hartford* is not based upon the proposition that under the facts of that case that R. S. 5219 was violated because there was a “total exemption of all other moneyed capital”, nor is it comparable to *Boyer v. Boyer* (where competition was not a factor in determining a violation under R. S. 5219). *Boyer* was not even cited in *Hartford*. The Court carefully pointed out in *Hartford* that in respect to the tax discrimination in favor of other moneyed capital: “It is not sufficient to show the discrimination alone” (p. 552). The Court said:

“The validity of the tax complained of depends upon whether or not the moneyed capital in the state thus favored is employed in such a manner as to bring it into substantial competition with the business of national banks.” (p. 552)

Contrary to appellee’s suggestion (Brief p. 199) about “across-the-board exemptions” in *Hartford*, this Court throughout its opinion emphasized that:

“Competition may exist between other moneyed capital and capital invested in national banks, serious in character and therefore well within the purpose of §5219, even though the competition be with some but not all phases of the business of national banks.” (p. 557)

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long as the competition (favored taxwise) is substantial in amount and is substantial when compared with the capitalization of national banks. *Hartford, Minnesota. Anderson, Richmond.* (See Appellant's Brief pp. 32-7).

However, even if an exemption doctrine does exist, an exemption necessarily must be based upon "just cause". *Mercantile, supra*, p. 623. To now hold, as appellee suggests, that this Court is powerless to review the facts and conditions of the present day to determine whether or not such just cause exists would mean that federal instrumentalities (national banks) would be subject to the uncontrolled action of state legislatures as to what might or might not be exempt from R. S. 5219. That the safeguards assured federal instrumentalities under Federal law (R. S. 5219) against state tax discrimination should be in the sole control of the state—not even subject to challenge before or review by a Federal Court, as appellee contends, is unthinkable.

There is no just cause for the State to exempt or prefer tax wise moneyed capital invested in savings and loan associations.

We respectfully submit that the record is replete with evidence, cited (with complete record references) in Appellant's Brief pp. 65-86; 18-24, to impel this Court to conclude that there is no just cause for the State of Michigan—in the face of R. S. 5219—to prefer savings and loan associations or their stockholders, when such associations are in substantial

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"The restriction [R. S. 5219] applies as well where the competition exists only with respect to **particular features** of the business of national banks . . ." (p. 556)

The Court continued to refer to competition (favored taxwise) in:

" . . . **particular phases** of banking (p. 558) . . . some though **not all** of the business carried on by national banks." (p. 558-9)

competition with an important and essential phase of the business of national banks.

The modern savings and loan associations—unlike those of the early days—are no longer small, neighborhood organizations of “poor people,” banded together to husband their weekly wages to provide funds to enable one another to build small homes. They are no longer mutual nor are they non-commercial, operated on a quasi-charitable basis as in the early days.

Today, these associations not only (a) are the principal competitors of national banks in the residential mortgage lending business, but (b) are powerful, rapidly growing financial institutions, operating commercially for a profit, seeking their investment share capital from the general public of all economic and income classes, not only of wage earners, but mostly from business men, professional people, corporations, partnerships, trusts, and pension funds. They no longer are mutual in operation. The interest of the investors is diametrically opposed to that of the borrowers.

Profit is the prime object and motive of the investors and of the associations. (R. 330a, 343a, 344a, 437a, 467a, 494a, 495a). The Attorney General of Michigan successfully argued to the Michigan Supreme Court that “A building and loan association is a **private corporation for profit.**” (See Appellant’s Brief, footnote 50, p. 57) and that “payments on shares in savings and loan associations are not deposits,” but are “purchases of **stock** therein” (*supra*, p. 12).^[36]

^[36]Notwithstanding, the Attorney General now argues to the direct contrary, saying (Appellee’s Brief, p. 50):

“ . . . the associations are not private profit institutions with capital stock.”

The record is clear that the modern savings and loan associations do no more to encourage thrift savings or home ownership than do national banks today.

Whatever reason may have prompted Michigan in the early days to exempt savings and loan associations no longer obtains. Michigan since 1939 has taxed such associations and their shares. (See Appellant's Brief pp. 22, 77). Whatever reason may have prompted Congress to exempt savings and loan associations from federal income taxes, no longer obtains, Congress in 1951 having removed the tax-exempt status of these associations.^[36a] (See Appellant's Brief pp. 22-3; 77.). Congress never exempted federal savings and loan associations from state taxation.

[36a] Contrary to appellee's contentions (Brief pp. 166-7), Congress in the Senate Finance Committee Report, 82nd Congress, 1st Session, Report 781, stated its intention as follows:

"Section 313 of your committee's bill removes the exemption of savings and loan associations . . . and those chartered by the Federal Government and **taxes them as ordinary corporations.**"

In respect to the deduction for dividends paid out by savings and loan associations, since such associations normally pay out most of their annual net earnings in dividends, like certain other corporations or business enterprises where most of the earnings are paid out in dividends each year, Congress permitted the associations to deduct the amount of the dividend pay-out in computing the taxable income of such corporation. Compare the dividend paid deductions, Sec. 591 of Internal Revenue Code of 1954 (re savings and loan associations) with comparable deduction provisions under Sec. 852(b) (2) (D) (for regulated investment companies); and Sec. 858 (for Real Estate Investment Trusts, which "except for the provisions this part would be taxable as a domestic corporation.") The amount of earnings retained each year not paid out to investors in each case is taxed at the normal and surtax rates applicable to domestic corporations.

Moreover, the deduction from income permitted associations for the addition "to reserve for bad debts" provided by Section

(Continued on next page)

Notwithstanding the foregoing and Appellant's Brief, which is replete with record references, appellee (Brief pp. 152-3) would have this Court believe that there is no evidence in the record to show that the modern associations operate in a basically different way than did associations of early days (pre-1900). Appellee says, (Brief p. 153) that there were only two witnesses (Woodworth and Doty) who testified on the subject and that they denied that there was any significant change **since early times**.

The testimony of these two witnesses clearly does not sustain appellee's assertion. Doty (whose testimony is referred to by appellee in footnote 150, p. 153 of Appellee's Brief) did not testify as to associations of times earlier than 1937 (R. 734a, 747a).

(Continued from page 30)

593 of the Internal Revenue Code 1954 (originally Sec. 313 of the Revenue Act of 1951) was intended to provide a formula to cover "bad debts"—loan loss contingency, like commercial banks, to achieve the same general result as the Commissioner of Internal Revenue's regulatory policy for banks, providing for a 20-year moving average of actual loan loss experience. See Internal Revenue Bulletin 1951, pp. 475, 478, 563, 627. The fact that this reserve provision for savings and loan associations has proved to be substantially greater than their loan loss experience does not indicate an intention of Congress to prefer such associations. Because of serious dislocation caused thereby, there is being presented to and Congress is now considering corrective legislation regarding this bad debt reserve provision to bring it in line with the average loan loss experience of associations over a period of years.

Shareholders of savings and loan associations since 1941 have been subject to federal income taxes on **all dividends received** (previously, since 1933, dividends were exempt from the normal tax of 3%, but not the surtax). Federal Tax Regulations, 1960, Sec. 1.103-2(b).

Professor Woodworth testified that he did not know of any change in character or practices since 1933 (865a). On cross-examination, however, he **was obliged to admit that there had been changes since earlier times.**^[37] (R. 893-9).

These "considerable changes" he described as "technical" because the "character" of savings and loan associations was the same; they still engaged primarily in the residential mortgage business from funds obtained from savings ["share capital"] accounts (R. 894-5).

^[37]Woodworth admitted on cross-examination (R. 897a) that

"In the early days of these institutions, the transactions of the associations were confined to members and no one could participate in the benefits they afforded without becoming a shareholder."

and that "in the early times . . . a borrower had to be an investor" (893a). "Stockholders would be committed to make a definite weekly or monthly payment to the association for a period of time and if they failed to honor their obligations, there would be fines or penalties" (R. 893a). ". . . only borrowers could be shareholders of the association, they didn't have outside borrowers except from shareholders" (894a; 899a).

Woodworth however admitted that in modern times (1952)—"the borrower did not have to be an investor any more" (R. 895a) "investors were primarily interested in returns from their investment" (R. 895a) and "borrowers were not interested in the investors" (R. 895a). Previously, Woodworth testified that borrowers from savings and loan associations were only interested in obtaining the best mortgage terms available; whether they borrowed from associations or banks was unimportant to them (R. 868a), whereas the higher the profits made on mortgage loans, the better the return to investors and they were interested primarily in return on their investments (R. 873a; 895a).

Professor Woodworth agreed that

"More and more investing members are becoming simply savers, while borrowing members find dealing with these savings and loan associations only technically different from dealing with other mortgage lending institutions in which the lending group is distinct from the borrowing." (R. 899a).

On the other hand, Congress in 1951, deemed these changes so substantial that it found that there no longer was any "just cause" to exempt savings and loan associations from federal taxation. The Senate Finance Committee Report, 82nd Congress, 1st Session, S. Rept. 781 said:

"In the early days of these institutions, the transactions of the associations were confined to members; and no one could participate in the benefits they afforded without becoming a shareholder. Individuals became investing members of these organizations in the expectation of ultimately becoming borrowing members as well. Membership implied not only regular payments to the association for a considerable period of time, but also risk of losses. Members could not cancel their memberships or withdraw their shares before maturity without incurring heavy penalties. The fact that the members were both the borrowers and the lenders was the essence of the 'mutuality' of these organizations.

"Although many of the old forms have been preserved to the present day, few of the associations have retained the substance of their earlier mutuality . . . borrowing members find dealing with a savings and loan association only technically different from dealing with other mortgage lending institutions in which the lending group is distinct from the borrowing group. . . .

" . . . since savings and loan associations are no longer self-contained cooperative institutions as they were when originally organized there is relatively little difference between their operations and those of other financial institutions which accept deposits and make real-estate loans."

We submit that there is no "just cause" for the state to discriminate in favor of the shareholders of these modern savings and loan associations drawn from all economic classes of the public at large. These associations are "private corporations for profit," employing their great capital in the residential mortgage loan business — competing with na-

tional banks—seeking business from the general public at large of every economic class and strata.

V

Contrary to Appellee's Contentions

A small committee of Michigan Bankers Association cannot bargain away important safeguards prohibiting tax discrimination by a state against national banks guaranteed by Congress under R. S. 5219.

Appellee, in its brief (pp. 29-34, and elsewhere) infers that validity can be breathed into Act 9 merely because a small tax committee of the Michigan Bankers Association thought it "to be preferred to an income tax."^[38] and agreed to it in lieu of an income tax law.

Appellant and the other members of the Michigan Bankers Association were not consulted about Act 9, did not agree that the legislature could discriminate taxwise against them in favor of the savings and loan associations and their shares, were not apprised (until 5 or 6 years thereafter) of any "agreement" made by the Committee with the legislature to "help the State defend any attack on the legality of the tax . . . if the validity . . . was questioned by any national bank."^[39] The "agreement" was not voted upon by the members nor approved by them.

Whether the committee members were from "larger banks having interlocking directors with savings and loan associa-

^[38]Statement and brief of Appellant re Appellee's objections to motion of 68 banks in Michigan for leave to file brief, pp. 2, 4 and 10; Appellee's objections to motion of 68 banks, p. 20.

^[39]Appellant's statement and brief re Appellee's objections, pp. 2 and 3; Appellee's objections, p. 20.

tions or else received very substantial deposits from them"^[40] or from banks which did not do as large a residential mortgage loan business as many out-state banks in Michigan (and were not then as seriously affected by savings and loan association competition) does not appear. At all events the president of the First National Bank of Burr Oak Michigan in a letter to the Michigan Bankers Association critical of the Committee's position stated that it was "at variance with everything the writer has ever heard or read at bank meetings or from bank publications."^[41] Such position of the association is certainly at variance of that of a number of Michigan banks, 68 of which joined with Community National Bank of Pontiac to file a motion for leave to file a brief *amici curiae* and a brief in this proceeding.^[42]

It is undisputed that in 1952 the Michigan legislature imposed a tax upon banks which it concluded was unconstitutional as to national banks (Appellee's objections to Motion of 68 banks, p. 9 par. 1). Act 9 was then submitted in lieu thereof. The fact that it was thought necessary by a committee of the legislature to have an "agreement" of a small tax committee of the Michigan Bankers Association "to help

^[40]Letter of President of First National Bank of Burr Oak, Michigan to Michigan Bankers Association, Appellant's statement re Appellee's objections, affidavit, pp. 7 and 8.

^[41]*ibid*

^[42]Motion of 68 banks in Michigan for leave to file attached brief as *amici curiae* and brief.

Contrary to Appellee's unsupported insinuation (brief p. 33, footnote 84) Appellant has not paid nor agreed to pay the fee of counsel *amici* or the cost of printing the motion or the brief *amici*, Community National Bank alone having undertaken all the expense and fees thereof (see response of Michigan banks to Appellee's objections). Nor has Appellant paid or agreed to pay fees or costs in connection with the intervention proceedings of the intervenors.

the State defend any attack on the legality of the tax [Act 9]" indicates that the law was of doubtful validity at the time of its enactment.

For a full discussion and supporting papers see motion, statement, objection and briefs filed in this proceeding as listed in the footnote below.⁽⁴³⁾

At all events one thing is clear—appellee's suggestion to the contrary notwithstanding—Act 9 either violates R. S. 5219 or not depending upon the law and the evidence in this case and not because some committee made a bargain "to help the State defend [Act 9] from any attack . . . if the validity . . . was questioned by any national bank". We submit that upon the facts in this cause and the applicable law Act 9 is in conflict with R. S. 5219.

Respectively submitted,

Thomas G. Long
Victor W. Klein
Philip T. Van Zile, II
Harold A. Ruemenapp

Attorneys for Appellant

Michigan National Bank

January 11, 1961

(43)a. Motion of 68 banks in Michigan have leave to file brief amici curiae;

b. Objections of Appellee to motion;

c. Statement and brief of Appellant re Appellee's objections;

d. Response of Michigan banks to Appellee's objections.

APPENDIX A

No. 3839

Shares 23 $\frac{1}{4}$ UNION BUILDING AND LOAN ASSOCIATION,
LIMITED

Lansing, Michigan

This certifies that Alta F. Ward is the owner of Twenty-three and one-fourth **shares of the Fully Paid Stock** of the Union Building & Loan Association, Limited, of Lansing, Michigan, of the par value of \$100 each, for which she has paid twenty-three hundred twenty-five dollars (\$2325.00). This **certificate of stock** is issued to and accepted by the holder thereof subject to the terms and conditions of the By-Laws of said Association and subsequent amendments thereto; and all acts of its Board of Directors and to such rules and regulations as may be made from time to time by the Secretary of State.

In Witness Whereof, the Union Building & Loan Association Limited, has caused the corporate seal to be affixed and these presents to be signed by its duly authorized officers, this first day of January 1952.

W. S. ANDERSEN,

Secretary-Treasurer

H. M. ANDREWS,

President

(In case of optional shares, similar terms and conditions, and references to "shares of stock" are set forth at the beginning of a book delivered to the investor)

Authorized Capital \$750,000.00.

Certificate Number 936-F

Number of Shares 18

MARSHALL SAVINGS AND LOAN ASSOCIATION

of Marshall, Michigan

Fully-Paid Stock Certificate

This certifies that Ernest E. Hoover and/or Francis M. Hoover has paid the full par value of One Hundred Dollars (\$100.00) per **Share** for Eighteen Fully-Paid **Shares**, and is a member of the undersigned.

This Certificate is issued and by the acceptance hereof is held subject to all provisions of the laws of the State of Michigan, the articles of association and by-laws of the undersigned, and is transferable on the books of the undersigned by the holder hereof, in person or by duly authorized attorney, upon surrender of this certificate properly endorsed. The undersigned may treat the **holder of record** hereof as the owner for all purposes, without being affected by any notice to the contrary, until this certificate is transferred on the books of the undersigned. Certificates will not be transferred unless and until the transferee has made proper application for membership in, and has been accepted as a member of, the undersigned.

Witness, the seal of the undersigned and the signatures of its duly authorized officers, this the first day of July A.D., 1952.

Marshall Savings and Loan Association

Secretary-Treasurer

Vice-President

FILED

MAR 20 1961

BROWN, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant

NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (THREE RIVERS,
MICHIGAN), COMMERCIAL NATIONAL BANK OF
IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON,
and THE FIRST NATIONAL BANK AND
TRUST COMPANY OF KALAMAZOO, banking associations
organized under the laws of the United States,

Intervening Plaintiffs,

vs.

STATE OF MICHIGAN, DEPARTMENT OF REVENUE
OF THE STATE OF MICHIGAN, and
LOUIS M. NIMS, STATE COMMISSIONER OF REVENUE,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

Petition for Rehearing

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1960

No. 155

MICHIGAN NATIONAL BANK, a banking association
organized under the laws of the United States,

Appellant,

NATIONAL BANK OF WYANDOTTE,
THE FIRST NATIONAL BANK (THREE RIVERS,
MICHIGAN), COMMERCIAL NATIONAL BANK OF
IRON MOUNTAIN, THE NATIONAL BANK OF JACKSON,
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Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF MICHIGAN

Petition for Rehearing

Predicated upon the proposition that no one—not even the highest Court in the land—is infallible, this Court, in its wisdom, has made provision to prevent a miscarriage of

justice, where the Court has made a basic, factual error—subject to ready demonstration by uncontroverted proof in the record.

Seldom granted, a petition for rehearing under Rule 58 (1) is clearly here indicated. The ultimate factual conclusion of the majority opinion of the Court is founded upon basic error in fact, which is so fundamental that—once pointed out and recognized—the very under-pinning and foundation of its decision crumble and its decision cannot stand—even though the legal reasoning and theory upon which the majority opinion was based be precisely followed.

To this end, Appellant submits its petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

I.

The record irrefutably proves a 591% tax discrimination against national bank shares by the State of Michigan under R.S. 5219—even if the tax burden and “effect” be weighed and measured precisely in accordance with the legal theory prescribed by the majority opinion of this Court.

The opinion of the majority—that “in practical operation, Michigan’s tax structure does not have a discriminatory effect . . . against national banks or their shareholders as a class (pp. 3, 9)” —is based upon two basically erroneous premises, contrary to the uncontroverted evidence in the record.

These two erroneous premises are:

1. That the “profit making power” of national banks’ “controlled capital” [capital plus deposits] is equal to the “profit-making power” of savings and loan associations’ capital. This factual determination is 486% wrong.

2. That the only Michigan intangibles tax on "controlled capital" of national banks is $5\frac{1}{2}$ mills on their capital account. This overlooks the $2\frac{5}{8}$'s mill paid by banks on deposits. In the case of Michigan National Bank in 1952, this Court erroneously assumed that the only tax paid by the bank was \$68,499 and ignores the \$100,318 tax on deposits ("controlled capital"). In fact, the total intangible tax on the bank's "controlled capital" (capital plus deposits) was \$168,499, or 247% of the (\$68,499) tax considered by the majority of the Court in arriving at its conclusion of no tax discrimination.

The theory of the majority of the Court—upon which its ultimate factual conclusion of no discrimination rests—is stated in the opinion to be—

"a dollar invested in national bank shares controls many more dollars of moneyed capital . . . on the other hand the same dollar invested in a saving and loan share controls no more moneyed capital than its face value . . . The bank share has the power and control of its proportionate interest in all of the money available to the bank for investment purposes. In the case of Michigan National, this control is more than 21 times greater than the share's proportionate interest in the capital stock, surplus and undivided profits would indicate . . . As to all national banks in the United States . . . 14 times greater . . . [p. 10] Since Michigan National's share owner's investment has the **equivalent profit-making power** of an amount 21 times greater than itself and the investor in savings and loan share accounts has no similarly multiplied power, the national bank share would not be 'unfavorably' treated unless it was taxed in excess of 21 times the levy on savings and loan share accounts. [p. 12]"

A.

The First Major Error of the Majority is its conclusion that the "profit-making power" of a national bank for each dollar of (a) capital, (surplus and undivided profits) plus (b) "deposits, "controlled," and "available . . . for investment purposes" is "equivalent" and the same as that of savings and loan associations for each dollar of share accounts "available . . . for investment."

This premise is erroneous. It is contrary to the Record. It is contrary to every known and recognized principle and practice of sound banking.

The "profit-making power" of each savings and loan association dollar available for investment is 486% greater than the "profit-making power" of each dollar available for investment by all national banks in Michigan.

Sound banking—under the close supervision of the national banking authorities—demands a high degree of liquidity in order to maintain the integrity of the banking system, the safety of depositors' commercial funds and life savings and the financial and economic well-being of the nation.⁽¹⁾

A bank—taking deposits—must always keep liquid. Demand deposits must be paid upon demand. Time and savings deposits—though subject to a thirty-day notice—in practice also must be paid upon demand. Few banks, if any, which have invoked the thirty-day notice on savings deposits, have ever survived a run that inevitably follows when a bank tells depositors that it is unable to pay on demand.

⁽¹⁾90th Annual Report Comptroller of Currency—1952, pp. 1-2, and Table 11, (p. 45) showing U.S. and municipal bonds plus cash of all national banks in U.S. in 1952 exceeded 60% of all assets, as they did in Michigan (p. 73); 97th Annual Report of Comptroller of Currency—1959, pp. 6-7.

Annual Report of Federal Deposit Insurance Corporation—1952, pp. 34, 43, 107.

"Money and Banking," American Institute of Banking (1956 Printing) p. 181—et. seq.

"Bank Administration," American Institute of Banking (1957 Printing) pp. 147-166.

If a bank fails to pay its depositors, it is insolvent (regardless of the state of its balance sheet); and the bank is immediately closed and placed in receivership by the Comptroller of Currency (12 U.S.C. 191; *Smith vs. Witherow* 102 Fed. (2d) 638). There is no long stand-by or (built-in) statutory moratorium as in the case of savings and loan associations. (M.S.A. Sec. 23.526; 12 U.S.C. Sec. 1464, as implemented by 12 Code of Fed. Regulations, Section 544.1, pp. 445, 446, 448.)

To meet demands of depositors under all contingencies, to carry on its extensive "check-book" bank operations and to assure the safety of the funds deposited, a large part of the banks' funds must be kept in cash, short term bills, government or municipal bonds, varying in maturities from 3 months to 5 years, readily converted into cash. Cash on hand or in banks yields no return, and bills and government bonds produce low yield (2% in 1952,^[2] consistent with the safety of the securities.

As at December 31, 1952, Michigan National Bank had—of "total assets" of "\$305,801,569"—

"Cash, balance with other banks and cash items	\$ 46,045,857
United States Government obligations [bonds]	107,803,407
Stock of Federal Reserve Bank	300,000
	<u>\$154,149,264"</u>

(Ex. 3, Report of Condition, items 1, 2, 3 and 12, R. 931a). Thus, **more than 50% of the bank's assets were necessarily kept in cash or invested in low yielding government bonds.**

Less than 50% of the bank's assets, or \$146,411,387, was available for loans and discounts, (of which about \$60,000,000 were in residential mortgage and modernization loans). (R. 931a; 934a.)

^[2]Government securities in 1952 totalled \$107,803,407 (R. 931a). Interest received from government securities in 1952 was \$2,191,000 (R. 205a) or about a 2% yield.

On its total assets of \$305,801,569, the bank in 1952 was able to earn, "Gross Profit" after operating expenses, but before federal income taxes and dividends, \$4,146,000 (R. 1267a) or 1.3%.^[1]

Liquid assets (cash items, U. S. and municipal bonds, reserves with the Federal Bank and stock therein) of all national banks in Michigan at December 31, 1952, exceeded \$2,266,900,000 or 60% of total assets of \$3,728,340,000. 90th Annual Report of Comptroller of Currency, 1952, p. 73.

All national banks in Michigan earned, before federal income taxes and dividends, only 0.7% on total "controlled capital" in 1952. Total capital and deposits ("controlled capital") of all national banks in Michigan aggregated \$3,682,700,000, on which such banks earned \$27,557,000, before income taxes and dividends. 90th Annual Report of Comptroller of Currency—1952, Table 19, p. 117.

Savings and loan associations—unlike banks—have little need for liquidity, can invest in long-term, higher yield mortgage loans and had a "profit-making power" in 1952 of 3.4% on each dollar in a share account—486% greater than the (0.7%) "profit-making power" of all national banks in Michigan on their "capital" and "controlled capital" (deposits):

Savings and loan associations, having no depositors, have little need for liquidity. In 1952 almost 85% of their assets were invested in long-term residential mortgage loans (R. 1274a), and over 85% of their income was produced from mortgage loans (R. 1275a). (See Sixteen savings and loan associations in cities where Michigan National operated.)

^[1]Stockholders control all assets of the bank used in its operations, not only funds obtained from depositors. However, even if we follow this suggestion of the majority and use the majority's figures of \$13,000,000 (capital, surplus and undivided profits), plus deposits of \$283,000,000, or a total "controlled capital" of \$296,000,000 available for investments, the difference in the percentage yield is insignificant. Such "controlled capital" in 1952 produced the same \$4,164,000 "Gross Profit" (R. 1267a), before income taxes and dividends, or a yield of 1.3% plus.

The right of a savings and loan shareholder to have the association purchase his shares is not absolute. **If the association cannot meet the demand of a shareholder that it repurchase his shares, the association—by statute—can defer (for a long, indefinite time) the obligation to pay.** There is a built-in statutory moratorium. "Associations are not required to repurchase members' shares until 30 days after demand. If unable to repurchase at the end of 30 days, they may put all requests on a 'take your turn' plan. Under this plan all withdrawals are filed and paid in numerical order. If the value of a member's shares is more than \$1,000.00, he may be paid \$1,000.00, if available, when his number is reached. The application is then renumbered and placed at the bottom of the list. When his number is again reached, the process is repeated." See Appellees' Ex. 217, R. 1317a; M.S.A. Sec. 23.546; 12 U.S.C. Sec. 1464, as implemented by 12 C.F.R. Sec. 544.1 pp. 445, 446, 448.

If a bank cannot pay demand deposits upon demand, and time and savings deposits within 30 days, it is closed immediately, *supra* p. 5. There is no delay; there is no moratorium. For that reason, in 1952 the bank held more than 50% in cash and in low interest United States government securities, which securities yielded only 2%.

Therefore, savings and loan associations have the "power" and ability to invest its "available funds" in longer term and much higher yielding investments than banks.

In 1952 the 16 savings and loan associations, with share account capital of \$134,000,000 (R. 1273a), had a gross profit, before federal income taxes and before dividends of \$4,566,000 (R. 1275a), or a "profit-making power" on its capital of 3.4%.

This compares with the "profit-making power" of Michigan National in 1952 on its capital and "controlled capital" of 1.3%, and of all national banks in Michigan of 0.7%.

Thus, the "profit-making power" of savings and loan associations in Michigan in 1952 on their capital was 261% greater than the "profit-making power" of the Michigan National Bank on its capital plus "controlled capital" (deposits) and 486% greater than all national banks in Michigan. In this major factual premise (upon which it based its ultimate factual conclusion) the record irrefutably proves the majority opinion of the Court to be in error by 261% to 486%.

Stated in another way, appellant national bank in 1952 had a "profit-making power" on its "controlled capital" (capital plus deposits) of only 38% of the "profit-making power" of the 16 savings and loan associations in direct competition with appellants; and the "controlled capital" of all national banks in Michigan in 1952 had only about 21% of the "profit-making power" of savings and loan associations.

The majority of the Court found that a dollar invested in a national bank share has a "controlled capital" (capital plus deposits) of 21 times a dollar invested in a savings and loan share. Predicated upon the erroneous assumption that each dollar of "controlled capital" had the "equivalent profit-making power" of each dollar invested in a savings and loan association, the majority concluded that it was **permissible to tax** a national bank share at a rate **21 times** greater than a savings and loan share.

However, since the "profit-making power" of all national banks in Michigan on each dollar of such "controlled capital" is only 21% of that of a savings and loan association, the **permissible** number of times a dollar invested in national bank stock **may be taxed**—as compared to a dollar invested in a savings and loan association share—is **4.4 times** (21% of 21 times).

Even ignoring Error No. 2 (failure to consider the bank's tax on deposits), national banks **actually paid** 13.8 times the tax paid by a federal savings and loan association and 8.5 times that of a state association. Accordingly, when com-

pared with the tax on (a) federal and (b) state associations, there is a clear tax discrimination of 314%, and 193%, respectively, against all national banks in Michigan.^[4]

Thus, the gross error (Error 1) made by the majority, as demonstrated above, standing alone, is so prejudicial as to require a rehearing and a reversal.

^[4]As the majority of this Court recognized in its opinion (p. 6), whether or not R. S. 5219 is violated depends upon the "effect" of the state tax, as applied to "national banks or their shareholders **as a class.**" *Tradesmen's National Bank vs. Oklahoma Tax Commission*, 309 U. S. 560, 567. Violations under R. S. 5219 are not predicated upon the impact—favorably or unfavorably—as to any bank, separately singled out.

Certainly, R. S. 5219 does not permit discrimination against prosperous national banks and have a different application to the less prosperous banks. It **applies to all** "national banking associations or their shareholders, **as a class**" (*Tradesmen's, supra*, majority opinion, p. 6)—to the prosperous and the competent, as well as to those which lack ability, foresight, or management. Strength in national banking is vital to our economic and national well-being.

Notwithstanding, even if the "effect" of the state tax is applied solely to appellant bank, considered separately, there is impermissible discrimination under the Michigan intangibles tax (even ignoring the tax on deposits, "controlled capital," Error 2):

The permissible tax on appellant bank shares is 7.9 times ("profit-making power") greater than the tax imposed on savings and loan shares.

The tax discrimination against appellant bank, considered separately, is as follows:

	Actual tax rate on bank	Permissible tax rate on bank	% of actual tax rate to permissible tax rate
Federal Savings & Loan Associations	13.8 times greater	7.9 times	174%
State Savings & Loan Associations	8.5 times greater	7.9 times	108%
Average State & Federal Savings & Loan Associations	11.2 times greater	7.9 times	142%

Moreover, this is doubly compelling when this first major error is compounded by another basic error.

B.

The Second Major Error of the Majority is its failure to consider the fact that Michigan taxed the bank on its deposits ("controlled capital") at 2/5 of a mill (\$100,318), as well, taxing its capital at 5½ mills (\$68,181), thus committing a further error in determining tax burden of some 247%.

In discussing tax burden, the majority considered only the 5½ mill tax (\$5.50 per \$1000) on the banks' capital, surplus and undivided profits (\$13,000,000) taxed at \$68,181, which it compared with \$53,260 tax paid by the sixteen savings and loan associations on their \$134,000,000 share capital account at a 2/5 of a mill (\$.40 (cents) per \$1,000) tax rate.

The majority erroneously assumed that there was no intangibles tax on bank deposits "controlled capital" and failed to note that under the same intangibles tax law (of which Act 9 is a part), bank deposits were taxed at the rate of 2/5 of a mill (the same rate as shares of savings and loan associations are taxed) Act 301, P. A. 1939, as amended; M.S.A. Sec. 7.556 (3a). (See our brief, p. 48, footnote 42.)

At pp. 10-11, the majority opinion states:

"Relating the statistics to the immediate problem, the capital, surplus and undivided profits of Michigan National totaled about \$13,000,000, to which the 5½ mill tax was applied. The tax amounted to \$68,181. The 16 savings and loan associations with which appellant was in competition had a paid-in share value of \$134,000,000, to which was applied the 2/5's mill tax. The resultant tax was about \$53,260. **HAD the same tax rate (2/5's mills) been applied to the moneyed capital, i.e., deposits, of Michigan National (\$283,000,000), the product**

would have more than equaled the tax revenue from the application of the $5\frac{1}{2}$ mill rate against its capital account. In fact, it would have amounted to about \$13,000, or 1.7 times the 1952 tax bill on appellant's shares. Similar results could be obtained as to all national banks in Michigan. Their total capital accounts, \$166,700,000 when taxed at the $5\frac{1}{2}$ mill rate, yield some \$917,000 in taxes. **The 2 5's mill rate, IF applied to their total deposits, \$3,516,000,000, results in \$1,406,000 in taxes. This is more than 1.5 times the 1952 taxes assessed under Act. No. 9.** (emphasis furnished).^[5]

These deposits were in fact taxed by the State at $2\frac{1}{5}$ mill.^[6] Thus, the intangibles taxes paid to the State of Michigan in 1952 by the Michigan National Bank on its capital

^[5]That the majority of the Court assumed there was no tax upon the bank deposits is further evident, by noting the Court's reference (pp. 7, 12) to, reliance upon and quotation from *Bank of Redemption v. Boston*, 125 U. S. 60, 62 (1888), as follows:

"But shares of the national banks, while they constitute the capital stock of the corporations, do not represent the whole amount of the capital actually employed by them. They have deposits, too, shown in the present record to amount, in Massachusetts, to \$132,642,332. **The banks are not assessed for taxation on any part of these, although these deposits constitute a large part of the actual capital profitably employed by the banks in the conduct of their banking business.**"

In the case at bar there was a tax of $2\frac{1}{5}$ mill on bank deposits.

^[6]Like the tax on savings and loan shares and on bank shares, the State of Michigan imposes an intangibles tax on bank deposits on the bank. In all three cases the bank may absorb the tax or collect it from the shareholders or depositors (M.S.A. Sec. 7.556(3a); 7.556(2a), (Act 9)). Appellant and other banks absorbed all of these taxes, just as do the savings and loan associations.

(and surplus and undivided profits), and upon its "controlled capital" (deposits) were as follows:

"Capital

\$13,000,000 at $5\frac{1}{2}$ mills

\$ 68,181

"controlled capital"

• deposits

\$282,500,200

less (deposits of
governmental units
and certified
checks)

31,704,595

\$250,795,605

at $2/5$ of a mill

100,318

\$168,499"

(Exhibit 1, R. 917a; see also R. 921a.)

The majority of the Court stated (p. 12) that:

"... the deposits are relevant to the determination of whether or not the tax, as computed under the statutes, is a greater burden than that placed on 'other moneyed capital.'"

Thus, in considering the amount of intangibles taxes paid by the Michigan National Bank in 1952 on its capital and "controlled capital" (deposits), the majority of this Court, by failing to consider the \$100,318 tax on deposits, grossly understated the actual taxes paid. The \$168,499 actually paid was 247% greater than the \$68,181 stated by this Court.

This same Michigan tax ($2/5$ mill) on deposits was paid by all national banks in Michigan, as well as the $5\frac{1}{2}$ mill tax on their capital accounts.

Thus, the majority of the Court has made two basic and major errors—in facts—refuted uncontrovertibly by the

record—which inexorably destroy its ultimate factual conclusion of “no discrimination.”^[7]

C.

Correcting the two demonstrated errors in fact—but following the legal theory of the majority opinion to measure tax burden and “effect”—there is a clear tax discrimination against appellant bank of at least 329%, and against all national banks in Michigan of over 591%.

Giving effect to and correcting both errors of the majority of the Court—

(1). “profit-making power” of national bank stock is only 4.4 times (of appellant, 7.9 times) that of savings and loan association shares, instead of 21 times, and

(2) the effective tax paid on each share dollar of national banks, including the tax on deposits (“controlled capital”), is 32 times^[8] the tax paid on each share dollar of federal savings and loan associations, 20 times^[8] that paid on state associations, and 26 times the average tax paid by both federal and state associations,

^[7]The statement of the small three or four man tax committee of the Michigan Bankers Association (referred to by the majority, pp. 8, 15) is wholly unsupported by the Record. The Association was not a party. It offered no proof. There is not a single iota of evidence in the Record to support the statement of this committee quoted in the majority opinion. (See Rule 40 (1) (e) and (2)). See petition of 68 Michigan banks for leave to file brief amici.

^[8]Appellant bank had share capital of \$13,000,000. It paid a total Michigan intangibles tax of \$168,499 (\$68,181 on its capital account, plus \$100,318 on its deposits), or a tax of \$12.96 per \$1,000 of share capital. This is 32 times the tax on \$1,000 share of federal savings and loan associations (\$.40 cents per \$1,000), and 20 times that on \$1,000 share of a state savings and loan association (\$.40 cents per \$1,000 plus the franchise tax of \$.25 cents per \$1,000).

the discriminatory "effect" against national bank shares is as follows:

As to all National Banks in Michigan

Compared to Tax on Savings and Loan Associations	Bank Tax Actual times greater. (divided by) Permissible times greater	% Actual Bank tax is of Permissible tax under R. S. 5219
Federal	32 — 4.4	727%
State	20 — 4.4	454%
Average	26 — 4.4	591%

As to Appellant Bank

Federal	32 — 7.9	405%
State	20 — 7.9	253%
Average	26 — 7.9	329%

Conclusion

"The sole question here is whether Act No. 9 effects a tax discrimination between national banks and savings and loan associations" (page 3 of the majority opinion). The Record clearly demonstrates that there is discrimination in tax against national banks—under the legal theory of the majority, or under any theory.

Never before, during the entire preceding century, has the legal doctrine of "controlled capital" and "equivalent profit-making power"⁽¹⁰⁾ of such capital been announced by this Court in interpreting R. S. 5219. Therefore, the application of the facts to such legal theory was not presented or discussed by appellant nor appellee in their briefs or at the argument in this Court or in any Court below. This is the first opportunity afforded appellant so to do and in all fairness such opportunity should not be denied.

For the foregoing reasons it is respectfully urged that this Petition for Rehearing be granted, and that, upon further consideration, the judgment of the Supreme Court of Michigan be reversed.

Respectfully submitted,

Thomas G. Long
Victor W. Klein
Philip T. Van Zile, II
Harold A. Rueménapp

Attorneys for Appellant,
Michigan National Bank

Dated: March 18, 1961

(10) We submit that the majority doctrine of "profit-making power" of share capital was not intended by Congress in valuing bank shares. Congress provided, as an **alternative method** to a share tax, a state tax on income, or measured by income or dividends (income) to a share owner, R.S. 5219, 12 USC 548. (See Appendix A to appellant's brief.) Each of these methods is **mutually exclusive** of a share (ad valorem) tax and would have required a tax on the income of savings and loan associations on an equivalent basis. The state of Michigan did not elect to tax income of the banks or their shares.

However, if "profit-making power" of the bank share is to be given effect, as did the majority, the foregoing demonstrates that in the case at bar its application was highly discriminatory.

See
Scales
67th Cong
4th Sess
Vol 64
pp 1434
pp 2192
Vol 64, part
pp 2216
See Re
Petitioner
p. 1476

Certificate of Counsel

I, Victor W. Klein, attorney for the above-named Appellant, Michigan National Bank, do hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

Victor W. Klein /s/

Victor W. Klein

Attorney for Appellant,

Michigan National Bank

SUPREME COURT OF THE UNITED STATES

No. 175.—OCTOBER TERM, 1960.

Michigan National Bank,
Appellant,
v.
State of Michigan, et al.

On Appeal from the
Supreme Court of
Michigan.

[March 6, 1961.]

MR. JUSTICE CLARK delivered the opinion of the Court.

The State of Michigan levies on the privilege of ownership¹ a 5½-mill tax per dollar on the value of each common share of stock in national banks located in the State. It requires federal and state savings and loan associations in the State to pay, in addition to other taxes not here involved, for its shareholders an intangibles tax of 2 5/8 of a mill on each dollar of the paid-in value of their shares. In addition, state associations also pay a franchise tax of

¹ Act No. 9 of the Public Acts of Michigan for 1953 (Mich. Comp. Laws, 1948; 1956 Supp., § 205.132a), provides in pertinent part:

"For the calendar year 1952 . . . and for each year thereafter, or a portion thereof, there is hereby levied upon each resident or non-resident owner of shares of stock of national banking associations located in this state . . . and there shall be collected from each such owner an annual specific tax on the privilege of ownership of each such share of stock, whether or not it is income producing, equal in the case of a share of common stock to 5½ mills upon each dollar of the capital account of such association . . . represented by such share; and equal in the case of a share of preferred stock to 5½ mills upon the par value of such share."

² Mich. Comp. Laws, 1948; § 205.132, provides in pertinent part:

"For the calendar year 1952, and for each year thereafter or portion thereof there is hereby levied upon each resident or non-resident owner of intangible personal property . . . and there shall be collected from such owner an annual specific tax on the privilege of ownership of each item of such property owned by him. . . . [T]he tax on shares of stock in . . . savings and loan associations shall be 1/25 of 1 per cent of the paid-in value of such shares."

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1/4 mill per dollar of their capital and legal reserves. Appellant Michigan National Bank, with banking offices in eight Michigan cities, brought this suit to recover taxes paid under protest for the year 1952, claiming that the levy under Michigan's Act No. 9 resulted in a tax on national bank shares at least eight times greater than that levied on "other moneyed capital in the hands of individual citizens" in the State, in violation of § 5219 of the Revised Statutes of the United States.* Initially its attack referred to moneyed capital in the hands of insurance and finance companies, credit unions and individuals, as well as savings and loan associations. Before trial in the Michigan Court of Claims, however, its claim was

* Mich. Comp. Laws, 1948, § 450.304a, provides:

"Every building and loan association organized or doing business under the laws of this state shall . . . for the privilege of exercising its franchise and of transacting its business within this state, pay to the secretary of state an annual fee of 1/4 mill upon each dollar of its paid-in capital and legal reserve."

The Michigan tax structure was amended, in 1954, to provide that federal savings and loan associations also pay a privilege tax equal to 1/4 mill on capital and legal reserves. Mich. Comp. Laws, 1948, 1956 Supp., § 489.371.

* R. S. § 5219, as amended, 12 U. S. C. § 548, provides in pertinent part:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may, (1) tax said shares . . . , provided the following conditions are complied with;

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

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limited to the latter only, asserting that these institutions were in substantial competition with a phase of the national banking business, i. e., residential mortgage loans, and were preferentially taxed. The resulting tax discrimination, appellant says, renders Act No. 9 invalid under the controlling decisions of this Court. Michigan's highest court has upheld the statute against this claim. 358 Mich. 611, 101 N. W. 2d 245. We noted probable jurisdiction, 364 U. S. 810. We have concluded that in practical operation, Michigan's tax structure does not have a discriminatory effect and is, therefore, valid. This determination obviates the necessity of our considering the voluminous and confusing statistics relevant to the issue of whether or not there exists competition between banks and savings and loan associations in the State.

The sole authorization upon which Michigan's Act No. 9 may rest is § 5219. *First Nat. Bank v. Anderson*, 269 U. S. 341 (1926); *Des Moines Nat. Bank v. Fairweather*, 263 U. S. 103 (1923). That authorization is qualified by a proviso that a state tax on national bank shares shall not be "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks." We have assumed, without deciding, that the national banks located in Michigan and savings and loan associations there are in competition in a substantial phase of the business carried on by national banks, i. e., residential mortgage loans. The sole question here is whether Act No. 9 effects a tax discrimination between national banks and savings and loan associations.

BACKGROUND RELATING TO THE PROBLEM.

Michigan first authorized the organization of savings and loan associations in 1887.⁵ They operate today under

⁵ Mich. Pub. Acts 1887, No. 50.

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the same law as "cooperative" or mutual associations which accumulate capital only through the sale of shares to members, and by retention of a permitted surplus and a reserve from profits. They may make loans only on first mortgage real estate notes and can neither carry on a banking business nor receive deposits.⁶ Their reserves must equal 10% of liabilities to their members and the associations' surplus is limited to 5% of assets.⁷ Earnings above the permitted reserves and surplus must be paid to members currently and at stated periods. The Congress authorized the organization of federal savings and loan associations in 1933 in the Home Owners' Loan Act, 48 Stat. 128, as amended, 12 U. S. C. §§ 1461-1468. They operate along the same general lines as state associations. The shares of members in both are insured by the Federal Savings and Loan Insurance Corporation.⁸

National banks, of course, engage in the general banking business as authorized by the National Bank Act.⁹ Prior to 1916 they were not permitted to make real estate mortgage loans except on certain farm lands. In that year the Congress authorized the banks to make residential loans for a term of not over a year and to the extent of 50% of the value of the mortgaged property.¹⁰ This term was first enlarged in 1927 to five years¹¹ and then to 10 years in 1935 by 49 Stat. 706, which also authorized an increase to 60% as the maximum proportion of property value permitted to be loaned. In 1934, national banks were authorized to purchase F. H. A. guaranteed mortgages.¹² Ten years later that authority was enlarged to

⁶ Mich. Comp. Laws, 1948, § 489.37.

⁷ Mich. Comp. Laws, 1948, § 489.24.

⁸ 48 Stat. 1257, as amended, 12 U. S. C. § 1726.

⁹ 12 U. S. C. § 21-200.

¹⁰ 39 Stat. 754.

¹¹ 44 Stat. 1232-1233.

¹² 48 Stat. 1263.

include V. A. loans which the Comptroller of the Currency by decision found to be in the same category as F. H. A. mortgages.¹³ It was not until this time that national banks became any significant factor in the residential mortgage field. By 1952 their deposits had more than doubled, amounting to 92% of their assets,¹⁴ having totaled only 41% thereof at the time of the passage of § 5219.

Michigan National was organized in 1941 with 150,000 shares of \$10 par value and total resources of about \$68,000,000. In 1952 it had outstanding 500,000 shares of the same par value (all of the increase having been issued as dividends) and resources of some \$306,000,000. In 1952 its gross earnings on its capital account were 91%, which, after all expenses and taxes (except dividends and federal income tax), remained at over 31%. The 16 building and loan associations average net earnings for the same year (before dividends and federal income taxes) amounted to 3.4% of their capital, approximately their normal annual earning. A \$1,000 investment in Michigan National's stock (58.8 shares) in 1941 was worth \$6,691.20 (157.5 shares) by 1952, an annual average increase in value of 61%. This does not include \$1,308.80 in cash dividends paid over the same period.

BACKGROUND AND CONSTRUCTION OF THE LEGISLATION.

1. Section 5219.

Congress enacted the Section in 1864¹⁵ and this Court has passed on it over 55 times in the near century of the

¹³ Home Loans Partially Guaranteed Under G. I. Act, Comptroller of the Currency Press Release, Dec. 12, 1944.

¹⁴ In accounting terminology, bank deposits are liabilities. However, they are a source of assets and for convenience will be referred to as assets hereafter.

¹⁵ 13 Stat. 111. It has been amended four times (15 Stat. 34, R. S. § 5219, 42 Stat. 1499, 44 Stat. 223), none of which changes are

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Section's existence. During that period the Court has kept clearly in view, as was said in the last case in which it wrote, that "the various restrictions [§ 5219] . . . places on the permitted methods of taxation are designed to prohibit only those systems of state taxation which discriminate in practical operation against national banking associations or their shareholders as a class." *Tradesmen's Nat. Bank v. Oklahoma Tax Comm'n*, 309 U. S. 560, 567 (1940). Reverting to one of the first and controlling cases dealing with the Section, *Mercantile Bank v. New York*, 121 U. S. 138 (1887),¹⁶ we find that Mr. Justice Matthews declared for a unanimous Court that the purpose of the Congress in passing the provision was "to prohibit the States from imposing such a burden as would prevent the capital of individuals from freely seeking investment in institutions which it was the express object of the law to establish and promote." At p. 154. The Court further held deposits in savings banks to be moneyed capital but approved their total exemption from state taxes, along with other enumerated property, on the ground that the State had shown "just reason" so to do. In essence the case stands for the proposition that the State cannot, by its tax structure, create "an unequal and unfriendly competition" with national banks. This case followed in the light of *Hepburn v. School Directors*, 23 Wall. 480 (1874), where Chief Justice Waite had pointed out that the taxable value of the stock in a national bank is not necessarily determined by its nominal or par value but rather by "the amount of moneyed capital which the

of any import here. In the 1958 edition of the United States Code it appears as § 548 of Title 12.

¹⁶ Also see an earlier case, often cited, *People v. Weaver*, 100 U. S. 539 (1879), which held that it was the actual incidence and practical burden of the tax which the Section sought out. This position is treated in detail by Professor Woosley in his work, *State Taxation of Banks* (1935).

investment represents for the time being." "Therefore some plan must be devised to ascertain what amount of money at interest is actually represented by a share of stock." At p. 484.

The question of tax equivalence thus posed has echoed and re-echoed through the cases. A year subsequent to the decision in *Mercantile Bank, supra*, the same point was raised in *Bank of Redemption v. Boston*, 125 U. S. 60 (1888), where the exemption of deposits in savings banks was approved in an opinion which again was written by Mr. Justice Matthews. The Court, in comparing the tax levied on the two institutions, *i. e.*, national banks and savings banks, said: "But shares of the national banks, while they constitute the capital stock of the corporations, do not represent the whole amount of the capital actually employed by them. They have deposits, too, shown in the present record to amount, in Massachusetts, to \$132,042,332. The banks are not assessed for taxation on any part of these, although these deposits constitute a large part of the actual capital profitably employed by the banks in the conduct of their banking business. But it is not necessary to establish the exact equality in result of the two modes of taxation." At p. 67. A quarter of a century later, Mr. Justice Pitney in *Amoskeag Savings Bank v. Purdy*, 231 U. S. 373 (1913), in commenting on the factors to be considered in determining the burden of the tax said: "There are other considerations to be weighed in determining the actual burden of the tax, one of which is the mode of valuing bank shares—by adopting 'book values' [capital, surplus, undivided profits]—which may be more or less favorable than the method adopted in valuing other kinds of personal property." At p. 392. The point was made even more clearly by Mr. Justice Brandeis in *First Nat. Bank v. Louisiana Tax Comm'n.*, 289 U. S. 60 (1933), where he said: "There is a fundamental difference between banks,

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which make loans mainly from money of depositors, and the other financial institutions, which make loans mainly from the money supplied otherwise than by deposits.

At p. 64. And so, we are taught that in determining the burden of the tax—its discriminatory character—we look to its effect, not its rate. See *Amoskeag Savings Bank, supra*; *Covington v. First Nat. Bank*, 198 U. S. 100 (1905), and *Tradesmen's Nat. Bank v. Oklahoma Tax Comm'n, supra*, the last case of this Court on the point.

2. *Michigan's Act No. 9.*

Act No. 9, we have stated, levies a tax of $5\frac{1}{2}$ mills on the book value of each share of stock in national banks, while the separately imposed tax on all savings and loan association shares, exclusive of other taxes, is $\frac{2}{5}$'s of a mill on the paid-in value of the shares plus, on state associations only, $\frac{1}{4}$ of a mill on the value of the paid-in capital and legal reserves. It appears from the record that prior to the enactment of this tax an inequity in the State's tax structure was thought to exist between state and national banks. Upon study of the problem and the recommendation of the Taxation Committee of the Michigan Bankers Association, the State Legislature decided to tax all banks "exactly alike." It embodied the proposal of the Association into Act No. 9. While we have no legislative history in the record before us, according to the *amicus curiae* brief of the Bankers Association filed in the trial court, the sponsors of Act No. 9 thought it would be "reasonable from the viewpoint of the public, equitable from the viewpoint of the competitors, and practical from the viewpoint of the banks themselves." The opinion of responsible officials of this Association, filed in this case some seven years after Act No. 9 had been in effect and the taxes therein provided paid without protest, save for appellant and four other banks, was: "Actual experience with the taxation system shows

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that it has produced a reasonable amount of revenue to the State; that it has not created any competitive disadvantage among the various types of institutions; and that it has proven to be simple to administer."

Michigan's Supreme Court has also held that no discrimination in the tax was proven. While the basis of this holding is not too clear, we take it that the finding of total tax equality as between the national banks and the associations insofar as Act No. 9 was concerned, meant that, in the court's view, the Michigan Legislature, in fixing the rate (5½ mills) on the banks, had either (1) taken into consideration the moneyed capital on hand in each type institution, i. e., deposits, which were not present as to savings and loan associations, or (2) if such method of valuation of bank stock was not permissible, that the Legislature intended to exempt from taxation any difference between the taxes levied on national banks and savings and loan associations because of the functions of the latter as repositories for the "small savings and accumulations of the industrious and thrifty." Such differences, the Michigan Supreme Court said, were "justified as partial exemptions," under *Mercantile Bank, supra*, and subsequent cases. While we are not bound by either of these interpretations placed on Act No. 9 by Michigan's highest court, 358 Mich. 611, 639-640, 101 N. W. 2d 245, 259-260, we do accept as controlling its interpretation that, in fixing the rate on national bank shares, the Legislature took into account the moneyed capital controlled thereby.

We believe that, granted satisfaction of the other qualifications of § 5219, a State's tax system offends only if in practical operation it discriminates against national banks or their shareholders as a class. That is to say, we could not strike down Act No. 9, as interpreted by Michigan's highest court, unless it were manifest that an investment in national bank shares was placed at a disadvantage by

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the practical operation of the State's law. According to our cases, discussed above, that clearly appears to have been the purpose of the Congress in enacting § 5219.¹⁷ We have made a comprehensive examination of the record and fail to find such a discriminatory effect to be manifest in Michigan's tax system.

As has been repeatedly indicated in our decisions, a dollar invested in national bank shares controls many more dollars of moneyed capital, the measuring rod of § 5219. On the other hand, the same dollar invested in a savings and loan share controls no more moneyed capital than its face value. The bank share has the power and control of its proportionate interest in all of the money available to the bank for investment purposes. In the case of Michigan National, this control is more than 21 times greater than the share's proportionate interest in the capital stock, surplus and undivided profits would indicate. As to all national banks in the United States, the record shows that capital accounts amounting to about \$7,000,000,000 control some \$100,000,000,000 of deposits (92% of the total assets of all these banks) or an amount 14 times greater. Savings and loan associations have no similar assets of that character, their only source of moneyed capital being the share accounts of members and, at least in the case here, the relatively small amount of retained earnings and surplus permitted under law.

Relating the statistics to the immediate problem, the capital, surplus and undivided profits of Michigan National totaled about \$13,000,000, to which the 5½-mill tax

¹⁷ For a discussion of the effect of the cases, see Powell, Indirect Encroachment on Federal Authority by the Taxing Powers of the States, 31 Harv. L. Rev. 321 (1918). He concludes that the cases lead "to a disregard of formal legal discrimination where there is in fact no substantial economic discrimination." To the same effect, see Woodsley, *op. cit.*, *supra*, note 16, at pp. 24-25.

was applied. The tax amounted to \$68,181. The 16 savings and loan associations with which appellant was in competition had a paid-in share value of \$134,000,000, to which was applied the 2/5's mill tax. The resultant tax was about \$53,260. Had the same tax rate (2/5's mills) been applied to the moneyed capital, i. e., deposits, of Michigan National (\$283,000,000), the product would have more than equaled the tax revenue from the application of the 5 1/2-mill rate against its capital account. In fact, it would have amounted to about \$113,000, or 1.7 times the 1952 tax bill on appellant's shares. Similar results could be obtained as to all national banks in Michigan. Their total capital accounts, \$166,700,000, when taxed at the 5 1/2-mill rate, yield some \$917,000 in taxes. The 2/5's mill rate, if applied to their total deposits, \$3,516,000,000, results in \$1,406,000 in taxes. This is more than 1.5 times the 1952 taxes assessed under Act No. 9.

While it is obvious that the taxable value of the shares in these two types of financial institutions are determined by different methods¹⁸ and that they are being taxed at different rates, it does not follow that § 5219 is automatically violated. "It is not a valid objection to a tax on

¹⁸ The taxable value of a national bank share of common stock under Act No. 9 is determined by dividing the "capital account" [common capital, surplus and undivided profits] by the number of shares of common stock outstanding. A share account in a savings and loan association, on the other hand, is valued according to its "paid-in value." That this latter figure includes neither surplus nor undivided profits is obvious from an inspection of the tax return of a savings and loan institution and its financial statement. For example, the Industrial Savings and Loan Association's intangibles tax return for 1952 shows that its paid-in share value was \$5,970,000. The Association's monthly report for December 1952 shows that there were some \$283,000 in undivided profits and \$202,000 in legal reserves which were not included in the computation of paid-in value for tax purposes.

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national bank shares that other moneyed capital in the state [is] . . . taxed at a different rate or assessed by a different method unless it appears that the difference in treatment results in fact in a discrimination unfavorable to the holders of the shares of national banks." *Tradesmen's Nat. Bank v. Oklahoma Tax Comm'n*, *supra*, at 567. Cf. *Amoskeag Savings Bank v. Purdy*, *supra*; *Covington v. First Nat. Bank*, *supra*. We must remember the interpretation placed on Act No. 9 by Michigan's Supreme Court. It held in effect that the Legislature had taken into account, in fixing the different rates on national bank stock and savings and loan shares, the additional moneyed capital controlled by the former. Since Michigan National's share owner's investment has the equivalent profit-making power of an amount 21 times greater than itself and the investor in savings and loan share accounts has not similarly multiplied power, the national bank share would not be "unfavorably" treated unless it was taxed in excess of 21 times the levy on savings and loan share accounts. Cf. *Bank of Redemption v. Boston*, *supra*, at 67. Here the ratio is only 13.8 to one, and if the additional franchise tax upon state associations is included, the proportion drops to 8.5 to one. This is not to say that the value of the bank's deposits is a factor in the computation of the tax to be paid under the Michigan statutes. However, the deposits are relevant to the determination of whether or not the tax, as computed under the statutes, is a greater burden than that placed on "other moneyed capital."¹⁹

¹⁹ It is argued that this disregards the fact that bank deposits are liabilities and must be repaid. This contention is without substance for the savings share accounts must, by law, be purchased by the savings and loan association upon a member's withdrawal. Mich. Comp. Laws, 1948, § 489.6. In this respect, therefore, the share accounts and deposits are identical. Both must be settled on demand.

It is said, however, that this method would be contrary to *Minnesota v. First Nat. Bank*, 273 U. S. 561 (1927). It was argued in that case that an equivalence of tax between national banks and other moneyed capital existed because, if the tax rate applicable to other moneyed capital was applied to the assets of the bank without deducting liabilities, the ultimate tax would be approximately the same. However, Mr. Justice (later Chief Justice) Stone, writing for the Court, rejected that argument because it "ignores the fact that the tax authorized by § 5219 is against the holders of the bank shares and is measured by the value of the shares, and not by the assets of the bank without deduction of its liabilities. . . ." However, that case was decided on the authority of *First Nat. Bank v. Hartford*, 273 U. S. 548, which Mr. Justice Stone also wrote and handed down the same day. There the comparison between the widespread capital exempted and that of national banks which was taxed, led to the invalidation of Wisconsin's tax statute. The error the Court found was that Wisconsin "construed the decisions of this Court as requiring equality in taxation only of moneyed capital invested in businesses substantially identical with the business carried on by national banks." While Minnesota's Act, as construed, was not so broad, it taxed capital (including state bank shares) other than that invested in national bank shares at a lower rate. Since both national and state banks were permitted to deduct deposits, it followed that it would have been discriminatory to tax one at a lower rate than the other. However, implicit in the ruling is the proposition that if the same base is employed in the valuation of the shares of the competing institutions, as here, and the practical effect of the different rate does not result in a discrimination against moneyed capital in the hands of national banks, when compared with

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other competing moneyed capital, it does not violate § 5219. "[T]he bank share tax must be compared with . . . the tax on capital invested by individuals in the shares of corporations whose business competes with that of national banks." *Minnesota v. First Nat. Bank*, *supra*, at 564. In short, resulting discrimination in the effect of the tax is the test.

Moreover, these cases were both handed down prior to congressional enactment of the Home Owners' Loan Act of 1933,²⁰ which is "in pari materia" with § 5219 and appears "to throw a cross light" [L. Hand in *United States v. Aluminium Co. of America*, 148 F. 2d 416, 429 (C. A. 2d Cir. 1945)] on Michigan's savings and loan tax statute. The 1933 Act, permitting the creation of federal savings and loan associations contained a provision respecting local taxation which stated in part:

" . . . no State . . . shall impose any tax on such [federal] associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

Unless Congress had recognized that States taxing national bank shares were free, in spite of § 5219, to exempt their own savings and loan associations from local taxation, it would have used language similar or referring to § 5219, as it did in other federal statutes creating different types of thrift institutions.²¹ To insure that the federal creatures received the same benefits, if any, as state agencies, Congress tied the taxation limitations to state action affecting the latter rather than to § 5219.

²⁰ 48 Stat. 128, as amended, 12 U. S. C. §§ 1461-1468.

²¹ 42 Stat. 1469, 12 U. S. C. § 1261 (National Agricultural Credit Corporations); 39 Stat. 380, 12 U. S. C. § 932 (joint-stock land banks).

Although the federal statute was enacted prior to Michigan's saving and loan tax statute, its accommodation to such state measures, actual or potential, illustrates the assimilation by Congress of state savings and loan associations to their federal analogues, and not to the very different national fiscal institutions which national banks are. Furthermore, the power of the State to grant liberal tax treatment to its own associations, viewed even without the light of congressional action, is amply supported by the exemption doctrine of *Mercantile Bank, supra*, recognized as still vital long after Michigan's law of 1887 under which the savings and loan associations of that State are organized. These considerations weigh heavily in evaluating Michigan's enactment under § 5219.

Under this standard, Michigan's tax structure does not, in practical effect, result in any discrimination. Its system looks to the moneyed capital controlled by the shareholder. If it is a share in a bank—either federal or state—the legislature considers the deposits available for investment and fixes a rate commensurate with that increased earning and investment power of the shareholder. The resulting tax is not on the assets of the bank, nor on deposits, but on the control the shareholder has in the moneyed capital market. Thus, controlling some 21 times the cash value of his share, a Michigan National shareholder pays the higher rate. On the other hand, a savings and loan shareholder controls no deposits. He has only the cash value of his share (and the comparatively minute reserves allowed by law), insofar as the moneyed capital market is concerned. Consequently he pays the lower rate. As the Michigan Bankers Association has indicated, this approach is realistic from a business standpoint, does not result in discrimination, is economically sound and is fair to each type of taxpayer. If it results, as it did in 1952, in giving Michigan National a tax advantage it cannot complain.

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It may be that at some future time, although the statistics indicate it to be improbable,²² the bank deposits may fall to such a level that the 5½-mill rate would be violative of § 5219. But here we are concerned with only one year, 1952, and for that year the tax levied does not approach the permissible maximum. Such a possibility, however, may account for the action of the Legislature in setting the taxes at the lower-than maximum levels now applied.

Having assumed the element of competition between Michigan National and the savings and loan associations, a prerequisite to the application of § 5219, and in the light of both the clear doctrine of our earlier cases and the phenomenal growth and earning power of appellant despite Act No. 9, we cannot say that its burden in 1952 was so heavy as would "prevent the capital of individuals from freely seeking investment" in its shares.

We have considered appellant's other points and have concluded each is without merit.

Affirmed.

MR. JUSTICE STEWART took no part in the consideration or decision of this case.

²² From its organization in 1941 to the end of 1951, Michigan National's total assets grew from \$67,600,000 to \$272,500,000, an average annual increase of some \$20,500,000. By 1957, its assets totaled \$481,000,000, showing an average annual growth of almost \$34,800,000 during the years since Act No. 9 was passed. Similarly, deposits increased, on the average, by \$18,800,000 each year between 1941 and 1951. Since that time, they have grown at the average rate of \$30,700,000 a year.

SUPREME COURT OF THE UNITED STATES

No. 155.—OCTOBER TERM, 1960.

Michigan National Bank,
Appellant.

v.

State of Michigan, et al.

On Appeal from the
Supreme Court of
Michigan.

[March 6, 1961.]

MR. JUSTICE WHITTAKER, with whom MR. JUSTICE DOUGLAS joins, dissenting.

I respectfully but resolutely dissent. Exposition of my reasons will require a rather full and careful statement of the facts and the applicable law.

A State is without power to tax national bank shares except as Congress consents and then only in conformity with the conditions of such consent. See, *e. g.*, *First National Bank v. Anderson*, 269 U. S. 341, 342, and *Des Moines National Bank v. Fairweather*, 263 U. S. 103, 106. By § 5219 of the Revised Statutes of the United States (Act of June 3, 1864, c. 106, 13 Stat. 111, as amended by the Act of February 10, 1868, 15 Stat. 34, the Act of March 4, 1923, 42 Stat. 1499, and the Act of March 25, 1926, 44 Stat. 223), Congress has consented that:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or

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measured by their net income, provided the following conditions are complied with: •

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others"

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks"

Pursuant to that consent, Michigan passed its Intangibles Tax Act (Act 301, Public Acts of 1939; C. L. Mich., 1948, § 205.132; M. S. A. § 7.556 (a)) imposing, upon the owners, an annual tax (1) of 3% of the income from, but not less than 1/10 of 1% of the face or par value of, national bank shares, and (2) of 4 cents per \$100 of the "paid-in value" of savings and loan association shares. By another statute, Michigan has imposed, in addition, a privilege tax of 2½ cents per \$100 on the value of the capital and legal reserves of state (but not federal) savings and loan associations (C. L. Mich., 1948, § 450.304a; M. S. A. § 21.206)—thus making a total tax of 6½ cents per \$100 of the value of state, and 4 cents per \$100 of the value of federal, savings and loan shares.

In obedience to that Intangibles Tax Act, appellant, a national banking association having offices and doing business in seven cities in Michigan,¹ paid to the State, on behalf of its shareholders, the taxes thereby imposed on its shares for the year 1952. Thereafter, by Act No. 9 of the Public Acts of Michigan for 1953 (§ 205.132a, C. L. Mich., 1948, 1953 Supp.; M. S. A. § 7.556 (2a)), the State amended its Intangibles Tax Act as respects

¹ Appellant's main bank is located in the City of Lansing. It maintains branch banks in the Cities of Battle Creek, Flint, Grand Rapids, Marshall, Port Huron and Saginaw.

bank shares, but without touching the provisions respecting savings and loan association shares, to provide, in pertinent part, as follows:

"For the calendar year 1952 . . . and for each year thereafter, . . . there is hereby levied upon each . . . owner of shares of stock of national banking associations located in this State and banks and trust companies organized under the laws of this State, and there shall be collected from each such owner an annual specific tax . . . equal in the case of a share of common stock to $5\frac{1}{2}$ mills upon each dollar of the capital account of such association, bank or trust company represented by such share, and equal in the case of a share of preferred stock to $5\frac{1}{2}$ mills upon the par value of such share." ²

Acting under the provisions of the amended statute ("Act 9"), the State imposed an additional tax upon the owners of appellant's "shares" for the year 1952 of \$49,929.27. After paying that additional tax under protest, appellant brought this action in the Michigan Court of Claims for its recovery.³ The ground of its suit was that the State's action in taxing the "shares" of national banks at a rate of 55 cents per \$100 of their value, while taxing the "shares" of savings and loan associations at a rate of $6\frac{1}{2}$ cents per \$100 of their value, taxed the former "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national

² Act 9 contains a further relevant provision which, in pertinent part, reads:

"Capital account" as referred to herein shall be determined by adding the common capital, surplus and undivided profits accounts . . . and the dollar amount of the capital account represented by each share of its common stock shall be determined by dividing such capital account by the number of shares of such common stock"

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banks," and therefore violated § 5219. After trial, the Michigan Court of Claims held that the assessment and collection of the additional tax did not violate § 5219 and entered judgment for the State.

On appeal, the Michigan Supreme Court, though conceding that Act 9 placed the shares of "both state and national banks in a special and more heavily taxed category" than the shares of savings and loan associations, held, *inter alia*, (1) that because savings and loan associations are "different in character, purpose and organization from national banks," operate "in a narrow, restricted field," and are not permitted to receive deposits, they could not, as a matter of law, come "into competition with the business of national banks" within the meaning of § 5219, (2) that inasmuch as Michigan lawfully might entirely exempt some entities or activities from taxation without offending § 5219, it may prefer the shares of savings and loan associations, by granting their owners a lower tax rate than it grants to the owners of shares of national banks, without thereby violating § 5219, and (3) that when the value of the total assets, rather than the value of the shares, of the two types of financial institutions is considered (thus putting out of consideration the liability of the banks to repay their deposits and other debts), the ratio of the total dollar tax burden to total assets is approximately the same in Michigan—.091 for banks and .089 for savings and loan associations—and this, it said, "establishes that there was practical equality of the total tax imposed upon building and loan associations and upon national banks." It therefore affirmed the judgment, 358 Mich. 611, 101 N.W. 2d 245, and we noted probable jurisdiction of the bank's appeal. 364 U. S. 810.

This Court today substantially adopts the latter conclusion, and on that basis affirms the judgment. In doing so, I must say, with respect, that the Court ignores both

the provisions of § 5219 and Michigan's mode, plainly expressed in its Act 9, of valuing national bank shares and the shares of savings and loan associations for the purposes of its tax upon them, and effectively defaces and departs from a long line of this Court's decisions, hammered out, case by case, over the course of nearly a century, that are squarely in point and specifically decisive of every question in the case.

The admitted difference in the rates of tax—55 cents per \$100 of the value of national bank shares as opposed to 6½ cents per \$100 of the value of savings and loan shares—leaves, of course, no doubt that the former are taxed “at a greater rate than” the latter—more than eight times greater. Therefore, the only questions that can possibly be open here under § 5219 are (1) whether savings and loan shares are “other moneyed capital in the hands of individual citizens,” (2) whether that moneyed capital is “coming into competition with [some substantial phase³ of] the business of national banks,” and (3) whether it is “substantial in amount when compared with the capitalization of national banks.” The latter being an element that this Court has held to be implicit in the statute. *First National Bank v. Hartford*, 273 U. S. 548, 558.

Surely it cannot now be doubted that shares owned by individual citizens in a savings and loan association, which engages in the business of making residential mortgage loans for profit, are “other moneyed capital in the hands of individual citizens,” within the meaning of § 5219. This Court has long since settled the question. The term “include[s] shares of stock or other interests owned by individuals in all enterprises in which the

³ In *First National Bank v. Hartford*, 273 U. S. 548, 556, 557, this Court held the phrase “some substantial part,” in the context here used, to be implicit in § 5219.

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capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money." *Mercantile Bank v. New York*, 121 U. S. 138, 157. "By its terms the [statute] excludes from moneyed capital only those personal investments which are not in competition with the business of national banks." *First National Bank v. Hartford*, *supra*, at 557. See also *Minnesota v. First National Bank*, 273 U. S. 561, 564; *First National Bank v. Anderson*, *supra*, at 348, and cases cited.

Whether such moneyed capital is being used in "competition with [some substantial phase of] the business of national banks" and is "substantial in amount when compared with the capitalization of national banks" are mixed questions of law and fact, "and in dealing with [them] we may review the facts in order correctly to apply the law." *First National Bank v. Hartford*, *supra*, at 552.

Here the relevant facts are not in dispute. The uncontroverted evidence shows that, as a part or phase of its general banking business conducted in seven cities in Michigan, appellant is extensively engaged in the business of making residential mortgage loans. In those cities, there are 16 savings and loan associations which are also extensively engaged in that business. Competition between them and appellant for such loans is keen and continuous. Both appellant and those loan associations extensively advertise for and solicit such loans from all classes and in every economic strata of the people in those communities. They make these loans on the same kinds of residential properties and in the same areas—one type of institution often refinancing and retiring a loan of the other. The rates, terms and conditions of the loans, being competitive, are substantially the same, and in many cases—particularly in the cases of F. H. A. and V. A. loans—they are of precisely the same terms and on

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exactly the same forms—forms prepared and furnished by the Federal Government.

Directed specifically to the question whether moneyed capital of savings and loan associations was being used, in significant amounts, in "competition with [some substantial phase of] the business of national banks" in Michigan, the uncontroverted evidence shows that in the year in question, 1952, the savings and loan associations in Michigan held \$433,000,000 of residential mortgage loans, while the national banks in that State held \$301,000,000 of such loans—which constituted 30% of their total loans and discounts. In the same year, the 16 savings and loan associations that were most directly competing with appellant made 6,498 residential mortgage loans aggregating about \$32,000,000 (of which \$6,273,000 were F. H. A. and V. A. and \$26,058,000 were conventional loans) which brought their total holdings in such loans to \$97,000,000. Whereas, in the same year, appellant made 2,728 residential mortgage loans aggregating about \$18,500,000 (of which \$10,869,000 were F. H. A., \$456,000 were V. A. and \$7,245,000 were conventional loans) which brought its total holdings in such loans to \$60,000,000. Those loans amounted to 40% of appellant's total loans and discounts, constituted 20% of its assets and yielded 26% of its income.

Upon the question whether the moneyed capital of savings and loan associations that was used in making residential mortgage loans in Michigan was "substantial in amount when compared with the capitalization of national banks" in that State, the uncontroverted evidence shows that in the year in question the savings and loan associations in Michigan held a total of \$433,000,000 of such loans, whereas the total capitalization of all national banks in that State was \$166,724,000. And the 16 savings and loan associations that were most directly competing with appellant held, in the same period, \$97,000,000.

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of such loans, whereas appellant's capitalization was \$13,038,000.

Certainly these undisputed facts establish that "moneyed capital" of savings and loan associations was being used in very significant "competition with [a substantial phase of] the business of national banks" in Michigan, and that such competition was "substantial in amount when compared with the capitalization of national banks" in that State.

It thus seems altogether clear to me that these uncontroverted facts establish every essential element of appellant's case. It cannot be denied that the plain words of § 5219 prohibit the States from taxing the shares of national banks "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with [some substantial phase of] the business of national banks." Yet, here Michigan taxed national bank shares at a rate of 55 cents per \$100 of value, but it taxed savings and loan shares at a rate of only 6½ cents per \$100 of value. Did it not plainly thus tax national bank shares "at a greater rate" than it taxed savings and loan shares? Certainly the latter were "other moneyed capital in the hands of individual citizens of such State." See, *e. g.*, *Mercantile Bank v. New York*, *supra*, at 157; *First National Bank v. Hartford*, *supra*, at 557. Does not the uncontroverted evidence, which we have summarized in some detail, shows that such "other moneyed capital" was used in Michigan in very significant "competition with [a substantial phase of] the business of national banks" and that such competition was "substantial in amount when compared with the capitalization of national banks" in Michigan? Do not these facts establish every element of appellant's case? Respondent does not, nor does the Court.

* See note 3.

point to any essential element that is missing. Why, then, is appellant not entitled to recover?

The only reasons advanced by respondents are those it successfully urged upon the Michigan Supreme Court. Every one of those contentions is opposed to the plain terms of § 5219 on the facts of this record, and also has been specifically decided adversely to respondents, on similar facts, by this Court, as I shall show.

First. Respondents argue that, because they may not receive "deposits," create "checkbook money" or engage in "banking," but must operate "in a narrow restricted field," savings and loan associations are so "different in character, purpose and organization from national banks" that—regardless of the actual facts shown in this record—they cannot, as a matter of law, come "into competition with the business of national banks" within the meaning of § 5219.

This argument, upon analysis, comes down to the contention that the restriction of § 5219 was directed only against discrimination in favor of state banks. For they, so the argument runs, are the only state-created institutions that lawfully may engage in "banking business" similarly to national banks and hence, respondents conclude, only the moneyed capital of state banks can constitute "other moneyed capital . . . coming into competition with the business of national banks," within the meaning of § 5219.

A similar question arose in *First National Bank v. Anderson*, 269 U. S. 341. There "[t]he defendants took the position [in the state court] that the congressional restriction [of § 5219] was directed only against discrimination in favor of state banking associations." This Court said the contention was ". . . untenable by reason of settled rulings to the contrary. . . ." *Id.*, at 349. After summarizing its earlier cases, the Court declared that "[t]he purpose of the restriction is to render it impos-

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sible for any State, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks, by favoring share holders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking. *Mercantile National Bank v. New York*, 121 U. S. 138, 155; *Des Moines National Bank v. Fairweather*, *supra* [263 U. S. 103], 116." 269 U. S., at 347-348. (Emphasis added.) And it held that "moneyed capital is brought into such competition [not only] where it is invested in shares of State banks or in private banking . . . [but] also where it is employed, substantially as in the loan and investment features of banking, in making investments, by way of loan, discount or otherwise, in notes, bonds, or other securities with a view to sale or repayment and reinvestment. *Mercantile v. New York*, *supra*, 155 U. S. 157; *Palmer v. McMahon*, 133 U. S. 660, 667-668; *Talbot v. Silver Bow County*, 139 U. S. 438, 447." 269 U. S., at 348. (Emphasis added.)

Respondents' contention that "other moneyed capital" does not come into competition with the business of national banks unless it is employed in a business substantially identical with all phases of the business carried on by national banks was squarely met and rejected by this Court, in words about as plain as it is possible to conceive, in *First National Bank v. Hartford*, *supra*. There, the Wisconsin Supreme Court "apparently construed the decisions of this Court as requiring equality in taxation only of moneyed capital invested in businesses substantially identical with the business carried on by national banks. Consequently, since that class of business must, under the Wisconsin statutes, be carried on in corporate form and capital invested in it taxed at the same rate as national bank shares, other moneyed capital, as defined in § 5219, within the State, it thought, was not favored." 273 U. S., at 555-556. That view, if logically pursued

would mean that "other moneyed capital" invested in businesses engaged in some but not all of the activities of national banks could not be considered in determining the question of competition. In rejecting that contention, this Court said:

"But this Court has recently had occasion, in reviewing the earlier decisions dealing with this subject, to point out that the requirement of approximate equality in taxation is not limited to investment of moneyed capital in shares of state banks or to competing capital employed in private banking. The restriction applies as well where the competition exists only with respect to *particular features* of the business of national banks or where moneyed capital 'is employed, substantially as in the loan and investment features of banking, in making investments by way of loan, discount or otherwise, in notes, bonds or other securities, with a view to sale or repayment and reinvestment.' *First National Bank v. Anderson, supra*, 348. In so doing, it followed the holding in *Mercantile Bank v. New York*, 121 U. S. 138, 157 . . . " 273 U. S., at 556. (Emphasis added.)

The Court then proceeded to declare the law in such clear and ringing terms as have settled the question for the intervening 35 years—from 1926 until today. It said:

"Competition may exist between other moneyed capital and capital invested in national banks, serious in character and therefore well within the purpose of § 5219, *even though the competition be with some but not all phases of the business of national banks.* Section 5219 is not directed merely at discriminatory taxation which favors a competing banking business. Competition in the sense intended *arises not from the character of the business of those who com-*

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pete but from the manner of the employment of the capital at their command. No decision of this Court appears to have so qualified § 5219 as to permit discrimination in taxation in favor of moneyed capital such as is here contended for. To so restrict the meaning and application of § 5219 would defeat its purpose. It was intended to prevent the fostering of unequal competition with the business of national banks by the aid of discriminatory taxation in favor of *capital invested by institutions or individuals engaged either in similar businesses or in particular operations or investments like those of national banks.* . . . Our conclusion is that § 5219 is violated wherever capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business." 273 U. S., at 557-558. (Emphasis added.)

Identical conclusions were again announced by the Court on the same day in *Minnesota v. First National Bank*, 273 U. S. 561.⁵

⁵ Since this Court's decisions in *First National Bank v. Hartford*, *supra*, and *Minnesota v. First National Bank*, *supra*, in 1926, several proposals to limit state taxes on national bank shares to such as are imposed by the State on state banks—thus permitting other competing moneyed capital, including that of savings and loan associations, to be taxed at a lower rate by the State—have been made to and rejected by Congress. Hearings before the Senate Banking and Currency Committee on S. 1573, 70th Cong., 1st Sess. (1928), pp. 2, 476; Hearings on H. R. 8727 before the House Committee on Banking and Currency, 70th Cong., 1st Sess. (1928), pp. 1, 1124; S. 3009, 1934, Cong. Rec. 73d Cong., 1st Sess., p. 4041; H. R. 9045, 1934, *id.*, pp. 6375, 10294.

Here, there is no question about the fact that the making of residential mortgage loans was a substantial phase of the business of national banks in Michigan. Such loans amounted to \$301,000,000 and constituted 30% of their total loans and discounts. Nor can there be any question about the fact that moneyed capital of savings and loan associations was being used in significant competition with the residential mortgage loan phase of the business of national banks in Michigan. These loan associations held \$433,000,000 of such loans. That amount was certainly substantial "when compared with the capitalization of national banks" in Michigan of \$166,724,000. These facts, under the rule of the *Hartford* and *Minnesota* cases, would seem to leave no doubt that appellants' shares were discriminatorily taxed in violation of § 5219.

Second. Respondents argue that savings and loan associations are similar in character and purpose to the, now largely historical, small mutual savings banks that were common in the last century. On that assumption, they argue that inasmuch as this Court has held that taxation of national bank shares at a greater rate than was assessed against such mutual savings banks did not offend § 5219 (see, e. g., *Merrantile Bank v. New York*, 121 U. S. 138 (1887); *Davenport Bank v. Davenport Board of Equalization*, 123 U. S. 83 (1887); *Bank of Redemption v. Boston*, 125 U. S. 60 (1888); *Aberdeen Bank v. Chehalis County*, 166 U. S. 440 (1897)), it should follow that the taxation of national bank shares at a greater rate than savings and loan shares does not offend the statute.

That argument, too, was specifically answered by the *Hartford* case. With unmistakable reference to these cases, the Court said: "Some of the cases dealing with the technical significance of the term competition in this field were decided before national banks were permitted to invest in mortgages as they are now. Act of December

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23, 1913, c. 6, § 24, 38 Stat. 251, 273; Act of September 7, 1916, c. 461, 39 Stat. 752, 754; Act of February 25, 1927, § 24.² And others go no further than to hold that in the absence of allegation and proof of competition with national banking capital, it cannot be said that an offending discrimination exists." 273 U. S., at 558. Then, squarely rejecting the theory of respondents' argument, the Court said:

"With the great increase in investments by individuals and the growth of concerns engaged in particular phases of banking shown by the evidence in this case and in *Minnesota v. First National Bank of St. Paul*,

"A historical review of § 24, Federal Reserve Act (12 U. S. C. § 371), which prescribed the authority of national banks to make real estate mortgage loans, reveals that, prior to 1916, national banks were not authorized to loan money on the security of real estate, with the exception of certain farm land. By the Act of September 7, 1916 (39 Stat. 754), Congress first authorized national banks to make residential mortgage loans, but limited them to an amount not exceeding 50% of the actual value of the property and to run for a term not longer than one year. By the Act of February 25, 1927 (44 Stat. 1232), Congress authorized such residential mortgage loans to run for a period of five years. By the Act of June 27, 1934 (48 Stat. 1263), Congress authorized national banks to make mortgage loans under Title II, National Housing Act (12 U. S. C. § 1701 *et seq.*), commonly known as F. H. A. mortgages. By the Act of August 23, 1935 (49 Stat. 706), amending § 24 of the Federal Reserve Act, national banks were authorized to make conventional residential mortgage loans in an amount not exceeding 60% of the appraised value of the property for a term of 10 years if 40% of the principal be amortized in that term. By decision of the Comptroller General of 1944, national banks were authorized to participate in the V. A. (or G. I.) home loan program. By the 1950 Amendment to § 24 (64 Stat. 880), national banks were authorized to make Title I, F. H. A. home improvements loans. It thus appears that, by 1952, national banks were authorized to make F. H. A. mortgage and home modernization loans and also V. A. mortgage loans identical to those made by savings and loan associations, and conventional mortgage loans comparable to those made by such associations.

today decided, post p. 561, discrimination with respect to capital thus used could readily be carried to a point where the business of national banks would be seriously curtailed. Our conclusion is that § 5219 is violated wherever capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business." 273 U. S., at 558.

Surely nothing more need be said.

Third. Respondents argue that inasmuch as this Court has held that a State may entirely exempt some entities or activities from taxation—i.e., churches, charities, small mutual savings banks, municipal bonds, and the like—without offending § 5219 (see, e.g., *Hepburn v. School Directors*, 23 Wall. 480; *Adams v. Nashville*, 95 U. S. 19; *Mercantile Bank v. New York*, *supra*; *Davenport Bank v. Davenport Board of Education*, *supra*; *Bank of Redemption v. Boston*, *supra*; *Aberdeen Bank v. Chehalis County*, *supra*), it follows that a State may prefer the shares of savings and loan associations, by granting their owners a lower tax rate than it grants to the owners of shares of national banks—even though the former are used in significant competition with a substantial phase of the business of the latter—without thereby violating § 5219.

Despite the strongest of implications to the contrary, we have no occasion here to consider whether the State might, under conditions shown by this record, entirely exempt the shares of savings and loan associations from taxation, while taxing the shares of national banks, for it has not done so. The State taxes savings and loan shares, although at only about $\frac{1}{8}$ of the rate it levies on national bank shares.

In these circumstances, respondents' argument runs in the very teeth of this Court's holding in the *Hartford* case that "Competition in the sense intended [by § 5219] arises not from the character of the business of those who compete but from the manner of the employment of the capital at their command" (273 U.S., at 557), and "that § 5219 is violated wherever capital, substantial in amount when compared with the capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business." 273 U.S., at 558. A more direct and conclusive answer cannot readily be perceived.

Fourth. Respondents argue, and the Court agrees, that when the value of the total assets, rather than the value of the shares, of the two types of financial institutions is considered, the ratio of the total dollar tax burden to total assets is approximately the same in Michigan—.091 for banks and .089 for savings and loan associations—and therefore national bank shares are not really taxed at a greater rate than savings and loan shares.

This brings us to the heart of our disagreement with the Court. After correctly observing that "There are other considerations [than rates] to be weighed in determining the actual burden of the tax, one of which is the mode of valuing bank shares—by adopting 'book value' [capital, surplus and undivided profits]—which may be more or less favorable than the method adopted in valuing other kinds of personal property," *Amoskeag Savings Bank v. Purdy*, 231 U. S. 373, 392; see also *Heptburn v. School Directors*, 23 Wall, 480, 484; *Tradesmen's National Bank v. Oklahoma Tax Comm'n*, 309 U. S. 560, 567, and that it is not the rate alone but the practical effect of the tax that determines whether there is discrimination, the Court says: "[I]t is obvious that the taxable value of the shares in these two types of financial institutions are

determined by different methods This conclusion is demonstrably wrong. In plain and simple terms Act 9 provides that the value of bank shares "shall be determined by dividing such capital account [capital, surplus and undivided profits] by the number of shares of such common stock" (see note 2), and the shares of savings and loan associations are valued at the "paid-in value." In each case, therefore, corporate liabilities are deducted and the tax is imposed upon the *book value* of the shares. Hence, it could hardly be plainer "that the taxable value of the shares in these two types of financial institutions are determined by exactly the same, not 'different,' methods. One cannot profitably elaborate a truth so simple.

Then the Court comes to the real basis of its decision. It says "[Michigan's] system looks to the moneyed capital controlled by the shareholder. If it is a bank—either federal or state—the legislature considers the moneyed capital in *deposits* and fixes a rate commensurate with *the increased value to the shareholder*"; that "a dollar invested in national bank shares *controls* many more dollars of moneyed capital, *the measuring rod* of § 5219. On the other hand, the same dollar invested in a savings and loan share *controls* no more moneyed capital than its face value. The bank share has the power and control of its proportionate interest in all of the moneyed capital available to the bank for investment purposes. In the case of Michigan National, this is more than 20 times its proportionate interest in the capital stock, surplus and undivided profits"; that "Since Michigan National's share owner's investment has the equivalent profit-making power of over 20 times that amount of moneyed capital and the investor in savings and loan share[s] . . . has no multiplied power, the national bank share would not be 'unfavorably' treated unless it was taxed in excess of 20 times the levy on savings and loan

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share[s]. . . . Here the ratio is *only* 13.8 to one”
(Emphasis added.)

I respectfully submit that this is an egregious error. Nothing in the Michigan statute provides or contemplates that the amount of capital “controlled” by the shares of a national bank, or the amount of the bank’s “deposits” are relevant factors in determining the value of bank shares for the purposes of this tax. Nor are “increased value[s] to the shareholder,” by reason of capital “controlled” by the bank or its “deposits,” made relevant factors. Quite specifically to the contrary, Act 9 provides that “‘Capital account’ as referred to herein shall be determined by adding the common capital, surplus and undivided profits accounts . . . and the dollar amount of the capital account represented by each share of its common stock shall be determined by dividing such capital account by the number of shares of such common stock” How could it more plainly be said that bank shares must be valued, for the purposes of this tax, solely upon their *book value*—without regard to the bank’s “deposits” or to the capital “controlled by the shareholder”? It is surely clear that the Michigan tax is not imposed upon national banks or upon their *assets*, instead, it is imposed upon the owners of the bank’s shares, measured *solely* by the value of those shares—“determined by dividing [the] capital account by the number of shares of such common stock.” See note 2.

Respondent’s argument, and the Court’s decision, put out of consideration the liability of national banks to repay their deposits and other debts, and would impose the tax on their *gross assets*, in direct opposition to the plain terms of the Michigan statute.

Precisely the same argument was rejected by this Court in *Minnesota v. First National Bank*, *supra*:

“Petitioner argues that in its actual operation, the tax on national bank shares is no greater than the tax

on credits, since under the statute individuals are taxed at the rate of 3 mills upon the full value of their credits without deducting their liabilities, whereas in taxing bank shares, the liabilities of the banks are deducted from their assets in ascertaining the forty per cent. valuation of their shares. Therefore, it is urged, if bank shares were taxed at the same rate without deducting the various liabilities in ascertaining the value of their shares, the amount of the tax would be approximately the same. This argument ignores the fact that the tax authorized by § 5219 is against the holders of the bank shares and is measured by the value of the shares, and not by the assets of the bank without deduction of its liabilities. *Des Moines National Bank v. Fairweather*, 263 U. S. 103. . . . 273 U. S., at 564.

It would indeed be novel, even in the absence of the contrary provisions of Act 9, to add liabilities to assets in determining book value of corporate shares—a simple contradiction in terms. It is likewise idle to observe the obvious fact that savings and loan associations have no “deposits,” and hence no deposit liabilities to deduct, or to argue that they, in valuing their shares for the purposes of this tax, should be allowed to deduct the amounts paid in by their “shareholders” for their “shares,” as the resulting figure would be zero, and the effect would be to tax those shares only in fiction. Nothing in either Act 9 or in § 5219 authorizes such double talk.

Here, Michigan values national bank shares and savings and loan association shares for the purposes of tax, by exactly the same method—the value of

The Michigan Supreme Court itself has held that investments in savings and loan associations are subscribed for or purchased as stock therein . . . —and are not deposits or indebtedness. *Michigan Savings & Loan League v. Municipal Finance Commission of The State of Michigan* (1956), 347 Mich. 314, 322.

shares. Yet it taxes bank shares at a rate of 55 cents per \$100 of their value, while taxing savings and loan shares at 6½ cents per \$100 of their value. Does not that conduct violate the provision of § 5219 that national bank shares "shall not be taxed at a greater rate than is assessed upon" other moneyed capital . . . coming into competition with the business of national banks"?

If the Court's argument, that a tax upon the bank's "deposits" at the rate applied to the shares of savings and loan associations would produce a greater tax than results from application of the higher bank share rate to the value of its shares, has any relevance to any issue in this case it can only be to demonstrate that including "deposits" in the valuation of bank shares would be to tax not just the bank's "shares," as authorized by § 5219, but *both* the "shares" and the "deposits" of the bank, and not at the lower rate applicable to savings and loan shares but at the eight times higher one applicable to the shares of national banks. Similarly, the Court's argument that appellant, despite this tax discrimination, has phenomenally prospered seems wholly irrelevant, for the criterion of § 5219 is not whether national banks may prosper, despite state tax discrimination, but is rather that their shares "shall not be [taxed] at a greater rate than is assessed upon other moneyed capital . . . coming into competition with the business of national banks." But, if the Court's argument has any relevance, it should be observed that Michigan national banks have not increased assets proportionately to savings and loan associations in that State since the passage of Act 9 in 1952, for the amount of residential mortgage loans then held by such associations in that State of \$433,000,000 has now grown to \$1,700,000,000.

Finally respondents argue that Congress, in restricting state taxation of federal savings and loan associations to a rate not "greater than that imposed by such authority

on "other similar local mutual or cooperative thrift and home financing institutions." 12 U. S. C. § 1464 (h), evidenced its understanding and intention that savings and loan shares might be taxed at a lower rate than the shares of national banks, and thus impliedly repealed or modified § 5219 so far as competition with the business of national banks from that source is concerned.

There is no basis for an assumption that Congress, in so restricting state taxation of federal savings and loan associations, intended, so lightly and collaterally, to repeal or modify § 5219 by implication. It is obvious that, by § 1464 (h), Congress only restricted state taxation of federal savings and loan associations to a rate not greater than that assessed by the State against similar state associations. Therefore, if, as seems entirely clear from § 5219 and our cases, a State may not tax national bank shares at a greater rate than it taxes state savings and loan association shares, when the latter are used in significant competition with a substantial phase of the former's business, it accordingly may not tax national bank shares at a greater rate than it taxes the shares of federal savings and loan associations who are similarly competing with a substantial phase of the business of national banks. For it may not, in such circumstances, lawfully prefer either over national bank shares with which they so compete. In other words, by § 1464 (h), Congress restricted the States from taxing federal savings and loan associations at a greater rate than state savings and loan associations, and by § 5219 it restricted the States from taxing national bank shares at a greater rate than they assess "upon other moneyed capital . . . coming into competition with the business of national banks." Hence, if a State taxes national bank shares at a greater rate than it assesses against the "moneyed capital" of savings and loan associations—state or federal—which is used in significant competition with a substantial phase of the business of such

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banks, it violates § 5219. That is exactly what Michigan has done here.

The proper interpretation and application of § 5219 to particular fact situations has been hammered out by the decisions of this Court, case by case, over the course of nearly a century. They have squarely met and decided, adversely to respondent, every question in this case. Finally, the *Hartford* and *Minnesota* cases brought a settled peace to this field that has endured until today—for 35 years. The obvious reason, I submit, is that they are right. There is, I respectfully submit, no call or reason to depart or deface those cases. And doing either will only again unsettle the law in a field where certainty of the applicable rules is nearly as important as their substance.

Under the law, settled for at least the last 35 years, appellant has proved every element of its case, and is entitled to recover. I would therefore reverse the judgment.